United States Court of Appeals

for the Second Circuit

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

77-7147

JULIE BAKER,

Plaintiff-Respondent

-against-

ROBERT E. BLISS, STUART M. SCHILLER, LEE E. JOHNSON,

Defendants

and

THE CITY OF NEW YORK,

Defendant-Appellant

ORIGINAL

APPENDIX

UNITED STATES COURT OF APPEALS
FILED
JUN 20 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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PAGINATION AS IN ORIGINAL COPY

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RELEVANT DOCKET ENTRIES

CIVIL DOCKET
UNITED STATES DISTRICT COURT

Jury demand date:
(Pltff-10-24-74)
(Deft. 3-1-75)

74 CIV. 4898

TITLE OF CASE	ATTORNEYS
JULIE BAKER, an infant by her parent and natural guardian LOUIS BAKER, LOUIS BAKER, individually and STEVEN BAKER,	For plaintiff: Harry H. Lipsig 100 Church St., NYC-10007-732-9000
-against-	3/3/7
THE CITY OF NEW YORK, ROBERT E. BLISS, STUART M. SCHILLER, LEE E. JOHNSON (and WALDORF ASTORIA HOTEL)	For defendant: Rivkin, Leff & Sherman (Deft. S.M. Schiller) 55 North Ocean Avenue Freeport, N.Y. 11520-FR 8-4334 Gladstein & Isaac (Bliss) 127 John St. NYC 10038 952-1111 (Waldorf) Trubin Sillcocks Edelman & Knapp 375 Park Ave. NYC 10022 PL 9-3400 W. Bernard Richland Adrian P. Burke (City of N.Y.) Municipal Building N.Y.C. 10007 (Deft. Schiller) ~~RIVKIN, LEFF & SHERMAN, 55 NORTH OCEAN Ave., NYC 11520 (FR. 8-4334)~~ ~~(For Deft. Schiller)~~

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
3. 5 mailed	Clerk	10/21/74	Tapper	15	
		10/21/74	Filing		15
3. 6 mailed 3-3-77	Marshal				
sis of Action: rsonal Injury- $2,100,000.00	Docket fee		✓		
	Witness fees				
tion arose at:	Depositions				

RELEVANT DOCKET ENTRIES

[illegible] Public Service, etal vs. The City of New York, etal 74 C[illegible]

74 CIV. 4[illegible]

DATE	PROCEEDINGS	Dates Order Judgment N.
[illegible]t.24-74	Filed complaint and issued summons.	
[illegible]ov.18-74	Filed stip & order that time of deft. Waldorf Astoria Hotel to answer complaint is ext. to 1-15-75. Bonsal, J.	
[illegible]v.19-74	Filed summons & return - Served Waldorf Astoria Hotel - 11-1-74, Stuart M. Schiller - 11-12-74. City of New York 11-8-74, Robert E. Bliss - 10-30-74, and Lee E. Johnson - not served.	
[illegible]v.29-74	Filed ANSWER to complaint by deft. S.M. Schiller.	RLSS
[illegible]c 2-74	Filed notice of deft. Stuart M. Schiller	
[illegible]c 2-74	Filed notice for discovery and inspection.	
[illegible] 13-74	Filed deft. Son Miller's Written interrogs.	
[illegible]ec.26-74	Filed Order appointing Harvey R. Brown to serve summons & complaint on deft. Lee E. Johnson. Clerk.	
[illegible]an.6-75	Filed stip & order that time of deft/ to answer complaint is ext. to 1-2-75. Bonsal, J.	
[illegible]an.2-75	Filed ANSWER of deft. Robert E. Bliss	[illegible]
[illegible]an.3-75	Filed affidavit of service of summons & complaint by Harvey R. Brown upon Lee Earl Johnson on 12-27-74.	
[illegible] 17-75	Filed ANSWER of deft. Waldorf Astoria Hotel.	[illegible]
[illegible]an.20-75	Filed ANSWER to complaint by The City of N.Y.	A.[illegible]
[illegible]an.22-75	Filed deft's S.M. Schiller answer to cross-complaint of deft. Waldorf Astoria Hotel.	
[illegible]eb 4-75	Filed ANSWER of Deft. Stuart M. Schiller	[illegible]
[illegible]eb.16-75	Filed ANSWER to cross complaint.	[illegible]
[illegible]eb.26-75	Filed ANSWER to " " by Waldorf Astoria Hotel	
[illegible]eb.[illegible]-75	Filed answer to " " Stuart M. Schiller.	
[illegible]ar 17-75	Filed VERIFIED ANSWER & demands as to Cross-Claim, deft. demands Jury Trial	[illegible]
[illegible]ar 20-75	Filed ANSWER to Cross Claim. (deft. Schiller)	[illegible]
[illegible]-03-75	Filed Deft. Schiller Notice for discovery&inspection rec.5/28/75,11:00 A.M.	
[illegible]-07-75	Filed [illegible]ty of NY ANSWER to Cross complaint of deft.Robert E.Bliss.	[illegible]
[illegible]3.05-75	Filed [illegible] Cross Notice of Exam.before trial of deft's	
[illegible]3-07-75	Filed Waldorf Astoria Hotel's cross notice of examination before trial of pltffs. and defts. N.Y.C., R. Bliss, L. Johnson and S. Schiller.	
[illegible]-13-75	Filed ANSWER of deft. Waldorf Astoria Hotel to cross-claim of deft. Bliss.	[illegible]
[illegible]-20-75	Filed pltffs.' verified bill of particulars.	
[illegible]-20-75	Filed pltffs.' verified answer to interrogs. of deft. Waldorf Astoria Hotel.	
[illegible]-20-75	Filed pltffs.' verified answer to interrogs. of deft. Stuart M. Schiller.	
[illegible]-10-76	Filed Order that a PRE-TRIAL CONFERENCE WAS HELD, parties to submit pretrial order on or before 3-15-76. So ordered. Bonsal, J.	
[illegible]-13-76	Filed pltff's affidavit & notice of motion Re: deposition of the Waldorf Astoria ret.4-19-76.	
[illegible]-15-76	Filed affidavit of M.E.Stern in opposition to pltff's motion ret. 4-19-76.	
[illegible]-20-76	Filed Memo-endorsed on pltff's motion filed 4-13-76 Re: deposition Motion disposed of in accordance with directions at oral argument. Pre-trial order due 5-31-76. Bonsal, J. m/[illegible]	
[illegible]-29-76	Filed Deft. Waldorf Astoria Hotel Affdvt&Notice of motion for an order granting summary judgment dismissing pltffs' complaint as well as cross claims of co-defts ret.5/10/76,Rm.519,9:30 A.M.	
[illegible]5-03-76	Filed affdvt of Howard [illegible] Thune for deft.Stuart M.Schiller in opposition to motion of co-deft.Waldorf Astoria Hotel for summary judgm dismissing pltffs complaint as well as cross-claims of co-defts. City of NY,Stuart M.Schiller&Robert E.Bliss	

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RELEVANT DOCKET ENTRIES

Julie Baker, etal vs. The City of New York, etal 74 Civ 4693

Page #2

Bonsal J.

DATE	PROCEEDINGS
04-[illegible]-76	Filed affidavit of M.E.Stern in opposition to motion for summary judgment.
04-[illegible]-76	Filed reply affidavit of Rene Sauthier to affidavit of H.L.Thune.
04-[illegible]-76	Filed affidavit of M.V.Ausubel in opposition to affidavit of M.E.Stern.
05-[illegible]-76	Filed Memo-Endorsed on deft Walforf Astoria Hotel motion filed 4-29-76 for summary judgment: Motion granted after oral argument, no opposition by pltff's . Settle order on notice. Bonsal,J. m/n
04-[illegible]-76	Filed deft. City of N.Y. answering affidavit .
04-23-76	Filed deft. R.E.Bliss answer to cross-claim of deft. S.M.Schiller.
05-21-76	Filed JUDGMENT: Ordered that deft. Waldorf Astoria Hotel have judgment against pltff's JULIE BAKER, an infant by her parent & natural guardian Louis Baker, individually & Steven Baker, dismissing the complaint as against it on its merits. The cross-claims of deft's The City of New York, Stuart M. Schiller & Robert E. Bliss against deft. Waldorf Astoria Hotel are dismissed. Bonsal,J. Judgment Ent.Clerk m/n Ent.5-24-76
06-[illegible]-76	Filed Order that deft. Robert E. Bliss appear for the purposes of taking his deposition at 10:A.M. on 6-13-76 in the Clerk's office Lower Lobby . Time to file pre-trial order is ext. to 6-30-76. Bonsal,J. m/n
06-[illegible]-76	Filed Order that deft. R.E.Bliss appear for taking of his deposition on 8-[illegible]-76, the investigator assigned by the State Insurance Dept. report to this court before 8-20-76, of their investigation to locate deft. R.E.Bliss. Time to file a pre-trial order is ext. to 9-10-76. Bonsal,J.
03-03-77	Filed Judgment # 77,334 pltff to have against deft City of N.Y. in the amount of $175,000.00 , the complaint is dism'd as to the remaining deftS. BONSAL J. Jdgmt Entered 3/3/77 Clerk. M/N
02-14-77	Jury trial held & cont'd before Bonsal J.
02-15-77	Trial Cont'd
03-01-77	Trail cont'd & concluded Jury verdice for pltff. Bonsal J.
03-10-77	Filed Notice of motion re: an order pursuantoto FRCP 50 directing the verdict &jdgmt be set aside.
03-21-77	Filed affdvt by pltffs re: opposition to deft City of N.Y. motion to set aside the jdgmt.
03-23-77	Filed Notice of Appeal to the U,S,C,A, by deft City of N.Y. from the judgment entered 3/3/77. M/N
5-25-76	FILED ORDER OF JUDGE BONSAL DIRECTING PARTIES TO SUBMIT PRE-TRIAL ORDER
9-14-76	FILED PLTFF'S PRE-TRIAL ORDER

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

J. Francis

S.D.N.Y. Criminal Calendar Sheet

4a

SUMMONS

SUMMONS IN A CIVIL ACTION

CIV. 1 (2-41)
Formerly D.C. Form No. 15a Rev. (4-19)

United States District Court

JUDGE DONAL

FOR THE

SOUTHERN DISTRICT OF NEW YORK

74 CIV. 4693

CIVIL ACTION FILE NO. _____

726346

JULIE BAKER, an infant by her parent and natural guardian LOUES BAKER, LOUIS BAKER Individually and STEVEN BAKER,

Plaintiffs

v.

THE CITY OF NEW YORK, ROBERT F. BLISS, STUART M. SCHILLER, [illegible] E. JOHNSON and WALDORF ASTORIA HOTEL,

Defendants

SUMMONS

To the above named Defendants :

You are hereby summoned and required to serve upon

HARRY H. LIPSIG

plaintiff's attorney , whose address 100 Church Street, New York, New York 10007

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

_____ Clerk of Court

_____ Deputy Clerk.

Date: New York, New York
October 23, 1974

[Seal of Court]

327965

2360-74

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Nlu 3/11/74

old

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COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

JULIE BAKER, an infant by her parent and natural guardian LOUIS BAKER, LOUIS BAKER, individually and STEVEN BAKER,

Plaintiffs,

-against-

THE CITY OF NEW YORK, ROBERT E. BLISS, STUART M. SCHILLER, LEE E. JOHNSON and WALDORF ASTORIA HOTEL,

Defendants.

----------X

VERIFIED COMPLAINT

PLAINTIFFS DEMAND TRIAL BY JURY

Plaintiffs by HARRY H. LIPSIG, allege

FIRST CAUSE

1. Infant plaintiff JULIE BAKER, a 17 year old student at Longview Community College in Raytown, Missouri, plaintiff LOUIS BAKER, her father and plaintiff STEVEN BAKER, a 24 year old medical student at the University of Missouri Medical School resided and still reside at 1255 West 63rd Street Kansas City, Missouri and are citizens of the State of Missouri.

2. Defendant, CITY OF NEW YORK, was and still is a municipal corporation, duly organized and existing under and by virtue of the laws of the State of New York.

3. Upon information and belief, defendant STUART M SCHILLER resided and still resides at 813 Columbia Street, New Milford, New Jersey and is a citizen of the State of New Jersey.

4. Upon information and belief, defendant ROBERT E BLISS resided and still resides at 53-02 97th Street, Corona,

New York and is a citizen of the State of New York.

5. Upon information and belief, defendant LEE E. JOHNSON resided at 1661 St. Johns Place, Brooklyn, New York and is a citizen of the State of New York

6. Upon information and belief, defendant WALDORF ASTORIA HOTEL is a hotel with its principal place of business in New York.

7. The matter in controversy herein exceeds the sum of $10,000.00 exclusive of interest, costs and disbursement

8. By reason of the diversity of citizenship and the sum in controversy herein, this honorable court has jurisdiction of the subject matter of this action.

9. The plaintiffs have complied with all of the conditions precedent to the bringing of this action and complied with all the provisions of the General Municipal Law of the State of New York in relation thereto, and in particular, have presented their claim hereinafter mentioned to the Comptroller of the City of New York for adjustment and more than thirty (30) days have elapsed since the presentation of said notice of claim and said claim remains unadjusted and said Comptroller has failed and refused to make any adjustment of the same, and said plaintiffs have, prior to the bringing of this action, and within ninety (90) days after the injuries hereinafter described were received, duly served notice upon The City of New York of their intention to sue upon the claim hereinafter set forth and that this action was commenced within one (1) year and ninety (90) days after said causes of action accrued.

10. Upon information and belief, at all times hereinafter mentioned, defendant STUART M. SCHILLER was the owner of an automobile bearing license number WNS 883, New Jersey.

11. Upon information and belief, at all times hereinafter mentioned, defendant LEE E. JOHNSON was the operator of the above mentioned automobile owned by defendant STUART M. SCHILLER.

12. Upon information and belief, at all times hereinafter mentioned, defendant LEE E. JOHNSON was operating said motor vehicle with the consent and permission of the owner defendant STUART M. SCHILLER.

13. Upon information and belief, at all times hereinafter mentioned, defendant ROBERT E. BLISS was the owner and operator of an automobile bearing license number 571 SCY, New York.

14. Upon information and belief, at all times hereinafter mentioned, defendant CITY OF NEW YORK owned, operated, managed and controlled a certain police car assigned to the 19th Precinct in Manhattan.

15. Upon information and belief, at all times hereinafter mentioned, the aforesaid police car was manned by police officers of The City of New York.

16. Upon information and belief, at all times hereinafter mentioned, the aforesaid police officers were acting in the course of their employment as police officers of The City of New York and within the scope of their authority.

COMPLAINT

17. Upon information and belief, at all times hereinafter mentioned, Lexington Avenue and 80th Street in the County of New York, City and State of New York, are public and much travelled highways in general use by the people of the State of New York and others

18. At all times hereinafter mentioned, plaintiffs were lawful passengers in the automobile owned and operated by defendant ROBERT E. BLISS.

19. On or about December 23, 1973 police officers of The City of New York in the course of their duties pursued the automobile owned by defendant STUART M. SCHILLER and operated by defendant LEE E. JOHNSON and carelessly, negligently and recklessly permitted him to escape their custody after having intercepted the said automobile and in addition thereto so carelessly, negligently and recklessly performed their duties that the said car of STUART M. SCHILLER was caused to come into violent collision with the motor vehicle occupied by the plaintiffs causing consequential and serious injuries to JULIE BAKER, STEVEN BAKER and others at a time when they were proceedin home from an engagement party at the Waldorf Astoria Hotel of FRED GREGORIO to CHERYLL OHMAN and JOSEPH GREGORIO, JR. to JULIE BAKER.

20. The defendants STUART M. SCHILLER, LEE E. JOHNSON, ROBERT E. BLISS and WALDORF ASTORIA HOTEL negligently contributed to the happening of the accident.

21. The plaintiffs injuries hereinafter set forth were caused wholly and solely by reason of the carelessness, recklessness and negligence of the defendants, their agents,

servants and/or employees with no negligence on the part of the plaintiffs contributing thereto.

22. Plaintiff JULIE BAKER was seriously injured in the accident.

23. Plaintiff JULIE BAKER was injured in the accident.

24. Plaintiff STEVEN BAKER was injured in the accident.

25. By reason of the foregoing LOUIS BAKER has been obliged to obtain medical aid for his daughter JULIE BAKER and has been deprived of her services.

26. JULIE BAKER claims damages of $1,800,000.00.

SECOND CAUSE

27. LOUIS BAKER claims loss of services damages of $200,000.00.

THIRD CAUSE

28. STEVEN BAKER claims damages of $100,000.00.

WHEREFORE, plaintiffs demand judgment against the defendants as follows:

By LOUIS BAKER on the First Cause of Action for $1,800,000.00; by LOUIS BAKER on the Second Cause of Action for $200,000.00; by STEVEN BAKER on the Third Cause of Action for $100,000.00 including interest from the 23rd day of December, 1973 together with the costs and disbursements of this action.

Harry H. Lipsig

HARRY H. LIPSIG
Attorney for Plaintiffs
Office & P.O. Address
100 Church Street
New York, New York 10007

GK

ANSWER OF DEFENDANT CITY OF NEW YORK

726/34

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JULIE BAKER, an infant by her parent and natural guardian LOUIS BAKER, LOUIS BAKER, individually and STEVEN BAKER,

Plaintiffs,

-against-

THE CITY OF NEW YORK, ROBERT E. BLISS, STUART V. SCHILLER, LEE E. JOHNSON, AND WALDORF ASTORIA HOTEL

Defendants

LD#9871-74

74 Civ. 4693
Judge Bonsal
Defendant Demands trial by jury of twelve

The defendant, The City of New York, answering the complaint herein, upon information and belief, alleges:

AS TO THE FIRST CAUSE OF ACTION:

FIRST: Denies having any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph of the complaint designated 1, 3, 4, 5, 7a, 8 and 18.

SECOND: Denies each and every allegation contained in paragraph of the complaint designated 19, 21, 22, 23, 24, 25 and 26.

THIRD: Denies each and every allegation contained in paragraph of the complaint designated 14, 15 and 16 except that the defendant, The City of New York, maintains and operates a Police Department as required by law.

FOURTH: Denies each and every allegation contained in paragraph of the complaint designated 17 except that Lexington Avenue and 80th Street in the Borough of Manhattan, City and State of New York ~~is a~~ are public streets and that it is the duty of the defendant, The City of New York, to maintain its public streets, including the sidewalks and the appurtenances thereon under its exclusive control, in a reasonably safe condition.

ANSWER OF DEFENDANT CITY OF NEW YORK

FIFTH: Denies each and every allegation contained in paragraph of the complaint designated 20 insofar as the same refer to, or may in anywise affect the defendant, The City of New York.

SIXTH: Denies each and every allegation contained in paragraph of the complaint designated 9 except that a notice of claim was presented to the Comptroller of the City of New York, and that more than thirty days have elapsed since such presentation and that no adjustment thereof has been made and that this action was commenced within one year and ninety days after its alleged accrual.

AS TO THE SECOND CAUSE:

SEVENTH: Denies each and every allegation contained in paragraph of the complaint designated 27.

AS TO THE THIRD CAUSE OF ACTION:

EIGHTH: Denies each and every allegation contained in the paragraph of the complaint designated 28.

FOR AND AS A FIRST CROSS COMPLAINT AGAINST THE DEFENDANTS ROBERT E. BLISS, STUART M. SCHILLER, AND LEE E. JOHNSON, IN THE EVENT THAT JUDGMENT IS RENDERED AGAINST IT, THE DEFENDANT, THE CITY OF NEW YORK, ALLEGES:

NINTH: That at all the times mentioned herein, the defedant, The City of New YOrk, was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

TENTH: Upon information and belief, that at all the times hereinafter mentioned and more particularly at the time of the alleged accident herein, the defendant Stuart M. Schiller, owned the motor vehicle bearing New Jersey registration number WNS 883.

ELEVENTH: Upon information and belief, that at all the times hereinafter mentioned and more particularly at the time of the alleged accident herein, the defendants

ANSWER OF DEFENDANT CITY OF NEW YORK

Stuart M. Schiller and Lee E. Johnson, their agents, servants and/or employees, operated, managed and controlled the aforesaid motor vehicle in the Borough of Manhattan, City and State of New YOrk.

TWELFTH: Upon information and belief, that at all the times hereinafter mentioned and more particularly at the time of the alleged accident herein, the defendant,, Robert E. Bliss, owned the motor vehicle bearing New York State Registration 571SC4.

THIRTEENTH: Upon information and belief, that at all the times hereinafter mentioned and more particularly at the time of the alleged accident herein, the defendant Robert E. Bliss, his agents, servants and/or employees operated, managed and controlled the aforesaid motor vehicle in the Borough of Manhattan, City and State of New York.

FOURTEENTH: That heretofore the plaintiffs herein commenced an action in this Court against the defendants to recover damages for personal injuries and loss of services sustained as alleged in the complaint the contents of which the defendant, The City of New York, begs leave to refer to upon the trial of this action as if the same were set forth herein more particularly at length.

FIFTEENTH: That if the defendant, The City of New York, is held liable to the plaintiffs, such liability arose out of the affirmative negligent and careless acts and conduct of the defendants, ROBERT E. BLISS, STUART M. SCHILLER AND LEE E. JOHNSON, their agents, servants and/or employees, in that they negligently and carelessly owned and operated the aforesaid motor vehicle in that said vehicles were driven at an excessive rate of speed under

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the circumstances the existing and they failed to yield to an emergency vehicle thereby causing and creating an alleged accident; and that the aforesaid defendants were otherwise negligent in the premises; and that the defendants The City of New York, is entitled to be indemnified by the said defendants, Robert E. Bliss, Stuart M. Schiller, and Lee E. Johnson, for the amount of any verdict or judgment which may be recovered against the defendant, The City of New York.

FOR AND AS A SECOND CROSS COMPLAINT AGAINST THE DEFENDANT WALDORF ASTORIA HOTEL, IN THE EVENT THAT JUDGMENT IS RENDERED AGAINST IT, THE DEFENDANT, THE CITY OF NEW YORK, ALLEGES:

SIXTEENTH: The defendant, The City of New York, repeats each and every allegation contained in the first cross complaint as if more fully set forth herein.

SEVENTEENTH: Upon information and belief, that at all the times hereinafter mentioned, the defendant Waldorf Astoria Hotel, was and still is a domestic corporation, organized and existing under and by virtue of the laws of the State of New York.

EIGHTEENTH: That if the defendant, The City of New York, is held liable to the plaintiffs, such liability arose out of the affirmative negligent and careless acts and conduct of the defendant, Waldorf Astoria Hotel, its agents, servants and/or employees, in causing the damages complained of and the defendant, The City of New York, is entitled to be indemnified by the said defendant,

Waldorf Astoria Hotel, for the amount of any verdict or judgment which may be recovered against the defendant, The City of New York.

WHEREFORE, the defendant, The City of New York, demands judgment dismissing the complaint herein, as to it, with costs and further demands that under Section 3019(b) of the Civil Practice Law and Rules, the ultimate rights of this defendant, The City of New York and the defendants Robert E. Bliss, Stuart M. Schiller, Lee E. Johnson, and Waldorf Astoria Hotel, as between themselves be determined, and that the defendant, The City of New York, have judgment over and against the defendants, Robert E. Bliss, Stuart M. Schiller, Lee E. Johnson and Waldorf Astoria Hotel, for the amount of any verdict or judgment which shall or may be recovered herein by the plaintiffs against this defendant, The City of New York, together with the costs and disbursements of the action and any expenses incurred in the defense thereof.

ADRIAN P. BURKE
Corporation Counsel
Attorney for City of N.Y.
Municipal Building
Borough of Manhattan
New York, N.Y. 10007

By: SAUL BERNSTEIN
SAUL BERNSTEIN

DEFENDANT, CITY OF NEW YORK, REQUESTS TO CHARGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X----------X

JULIE BAKER, an infant by her parent
and natural guardian LOUIS BAKER,
LOUIS BAKER, individually and
STEVEN BAKER,

74 Civ. 4693
(DBB)

Plaintiffs,

-against-

THE CITY OF NEW YORK, ROBERT E. BLISS,
STUART V. SCHILLER, LEE R. JOHNSON,
and WALDORF ASTORIA HOTEL,

Defendants.

X----------X

HONORABLE JUDGE:

The defendant, THE CITY OF NEW YORK, requests the following charges be included in your charge to the jury:

1. Vehicle and Traffic Law

"§1104. Authorized emergency vehicles

(a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of an authorized emergency vehicle may:

1. Stop, stand or park irrespective of the provisions of this title;

2. Proceed past a steady red signal, a flashing red signal or a stop sign, but only after slowing down as may be necessary for safe operation;

3. Exceed the maximum speed limits so long as he does not endanger life or property;

4. Disregard regulations governing directions of movement or turning in specified directions.

(c) Except for an authorized emergency vehicle operated as a police vehicle, the exemptions herein granted to an authorized emergency vehicle shall apply only when audible signals are sounded from any said vehicle while in motion by bell, siren, or exhaust whistle as may be reasonably necessary, and

when the vehicle is equipped with at least one lighted lamp displaying a red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle.

(d) An authorized emergency vehicle operated as a police, sheriff or deputy sheriff vehicle may exceed the maximum speed limits for the purpose of calibrating such vehicles' speedometer.

(e) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others."

2. Vehicle and Traffic Law

"§1144. Operation of vehicles on approach of authorized emergency vehicles

(a) Upon the immediate approach of an authorized emergency vehicle equipped with at least one lighted lamp exhibiting red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle other than a police vehicle when operated as an authorized emergency vehicle, and when audible signals are sounded from any said vehicle by siren, exhaust, whistle, or bell, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to the right-hand edge or curb of the roadway, or to either edge of a one-way roadway three or more lanes in width, clear of any intersection, and shall stop and remain in such position until the authorized emergency vehicle has passed, unless otherwise directed by a police officer.

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with reasonable care for all persons using the highway."

3. "A municipality is not to be held liable for the act of its police officers in undertaking a pursuit of a traffic violator. The police have a duty to undertake the pursuit. If the officers conduct the pursuit using their best judgment as to the most effective means of dealing with the violator, no liability will attach to their acts, even though hindsight might disclose alternate

methods that may have been safer for the public bystanders (Stanton v. State of New York, 29 A.D. 2d 612, 285 N.Y.S.2d 964, aff'd. 26 N.Y.2d 990, 311 N.Y.S.2d 28, 259 N.E.2d 494)." Thain v. The City of New York, 35 A.D.2d 585.

Dated: New York, New York
February 28, 1977

Respectfully submitted,

W. BERNARD RICHLAND
Corporation Counsel
Attorney for Defendant, THE CITY OF NEW YORK
Municipal Building
New York, New York 10007

OF COUNSEL
J. M. CARROLL

PLAINTIFF'S REQUESTS TO CHARGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

JULIE BAKER, an infant by her parent and natural guardian LOUIS BAKER, LOUIS BAKER individually and STEVEN BAKER,

Plaintiffs,

-against-

THE CITY OF NEW YORK, ROBERT E. BLISS, STUART M. SCHILLER and LEE E. JOHNSON,

Defendants.

- x

74 Civ. 4693

DBB

PLAINTIFFS REQUESTS TO CHARGE #1

The Court is respectfully requested to charge the jury as follows:

1. The plaintiff JULIE BAKER claims that as a direct consequence of the negligence of police officers of the City of New York, without any negligence on her part, she was injured which entitles her to recover damages for the injuries sustained.

More specifically, plaintiff claims that in trying to apprehend the driver of a fleeing car the police officers were negligent in several respects. They were negligent in the beginning and in continuing their chase of the white Thunderbird at increasingly higher rates of speed at night in a manner evidencing a reckless disregard for the safety of others in the area.

If you should find that plaintiff has sustained her burden of proving by a fair preponderance of the evidence that the police officers were negligent in any respect claimed,

then you must find that the defendant, the City of New York, was negligent for the City is responsible for the negligent acts of its police officers, either of commission or omission while those police officers are in performance of their official duties.

Negligence means the lack of due care under the circumstances. Negligence is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances or doing what such a person under the existing circumstances would not have done.

We mean the degree of care that ordinary prudent person in like circumstances would exercise except as specifically noted in this charge with respect to the standard applicable to police officers in pursuit of a fleeing car. Within the ordinary standard of care, however, the amount of care demanded may vary with the circumstances.

In this connection plaintiff is not required to offer evidence which positively excludes every possible cause of the accident except defendant's negligence.

If from the evidence as a whole, including any evidence introduced by defendant, you conclude that it is more probable that the police officers were guilty of negligence proximately causing the collision than that they were, your finding on the issue of negligence will be for the plaintiff.

PLAINTIFF'S REQUESTS TO CHARGE

If you find that the police officers were negligent, either in commencing or continuing the chase under all the circumstances, then before you can find for the plaintiff you must also find that the negligent police action was what we call a proximate cause of the accident.

Where there is negligence on the part of a defendant and harmful consequences are brought about by some intervening or independent force, the operation of which might have been reasonably foreseen, then there is no break in the chain of causation of such character as to relieve a negligent defendant of his liability.

In other words, if you find that the police officers were negligent, but that the accident resulted when the fleeing car came upon the scene at the very time when the vehicle in which plaintiff was a passenger happened upon the highway in the vicinity of the fleeing car, and that the appearance of the fleeing car on the scene at that time was a reasonable foreseeable event on the police officers' part, then you may still find the defendant The City of New York negligent here.

It is not defense that some negligent act of another may have concurred to produce the result.

Also, it is not necessary that the police should have foreseen the particular method by which the accident would occur if the possibility of an accident was clear to the ordinarily prudent eye.

PLAINTIFF'S REQUESTS TO CHARGE

In this case, if you find that the police officers' commencement and/or continuation of the chase under all the circumstances was negligence and that such negligence in a natural and continuous sequence unbroken by any efficient intervening cause resulted in the accident, without such negligence the accident would not have occurred, then you may find that such negligence was a proximate cause of the accident and the injuries of Julie and Steven Baker.

In looking at the police conduct in respect to the pursuit of the fleeing car, you must consider that what is negligence for an ordinary driver may not be negligence for a patrolman engaged in such pursuit. For instance, a police officer is permitted to chase a lawbreaker at a rate of speed in excess of the speed limit. On the other hand, an ordinary driver who exceeds the speed limit is considered negligent. The police officer, however, is not free to chase law violators in any manner. The applicable statute of the State of New York relating to the police driver's conduct that existed at the time of the accident states:

> "The driver of an authorized vehicle may exceed the speed limits so long as he does not endanger life or property".

The statute further explains the police driver's responsibility. It states:

> "The foregoing provision" -- "shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others."

PLAINTIFF'S REQUESTS TO CHARGE

Now this means that the privilege of exceeding the maximum speed limit is permitted only so long as it does not endanger life or property. The responsibility imposed on police officers by the statute to drive with due care for the safety of others does not cover compliance with the generally accepted definition of negligence.

But the question you the jury must decide is whether the police followed proper police procedures in chasing the fleeing car, in deciding whether the police, in pursuing that particular driver, failed to drive with due regard for the safety of all persons you may consider the plaintiff's contention that at some point of time before the accident the police officers should have recognized that continued pursuit was hazardous, in other words, it was improper police procedure for the police to chase a traffic violator at high speed at night.

The after acquired information that the pursued vehicle had been stolen does not excuse the negligence involved in the police's method of apprehending the person known to have only been involved in a minor traffic incident.

Plaintiff contends that an officer should not commence a high speed automobile pursuit whenever the risks to the safety of others outweigh the danger to the community if the suspect is not immediately apprehended.

Plaintiff contends that a police officer should terminate a high speed automobile pursuit whenever it develops in the course of same that the risks to the safety of others outweigh the danger to the community if the suspect is not immediately

apprehended.

In reaching a determination as to the reasonableness of the chase in the case at bar, you are to consider the offense which had been allegedly committed, a minor traffic incident, the location that the chase occurred in and the ability of the officer's car, a station wagon, to overtake the other automobile, a white Thunderbird automobile.

It is plaintiff's contention that the excessive speed of the white Thunderbird resulted from the fact that the driver of the Thunderbird was being pursued by the police and it was rather clear that this high rate of speed caused the collision between the Thunderbird and the vehicle in which plaintiff was a passenger.

Plaintiff contends that the defendant, City of New York, was negligent and that the actions of the police were unreasonable and showed a lack of regard of safety for all persons in engaging in pursuit with the excessive speeds involved, in view of the fact that as far as the police knew the driver of the white Thunderbird had only been involved in a minor traffic incident.

It is plaintiff's contention that the excessive speeds involved in this case which were used in pursuit of a traffic violator created an unreasonable risk to public safety.

It is plaintiff's further contention that the defendant's failure to comply with Section 1144 of the Vehicle & Traffic Law constituted negligence which was the proximate cause of the accident. Section 1144 provides:

PLAINTIFF'S REQUESTS TO CHARGE

> "Upon the immediate approach of an authorized emergency vehicle equipped with at least one lighted lamp exhibiting red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle other than a police vehicle when operated as an authorized emergency vehicle, and when audible signals are sounded from any said vehicle by siren, exhaust whistle, or bell; the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to the right-hand edge or curb of the roadwya, or to either edge of a one-way roadway three or more lanes in width, clear of any intersection, and shall stop and remain in such position until the authorized emergency vehicle has passed, unless otherwise directed by a police officer".

You have heard conflicting testimony in this case as to whether the police vehicle's siren was being sounded prior to the accident. It is for you the jury to resolve the conflict in testimony and decide whether in fact the siren was being sounded and was audible to those drivers in the vicinity.

In the event you find that the siren was not in use as required under the foregoing section of the Vehicle & Traffic Law, you may find that the foregoing violation of such section is evidence of the City's negligence by reason of the police's failure to comply with said section of the law.

If you find that the siren had been sounded prior to the accident, you must also determine whether it had been sounded in sufficient time to enable defendant Bliss, the driver of the automobile in which the plaintiff was a passenger, the vehicle owned and operated by the defendant Bliss, to avoid the collision.

PLAINTIFF'S REQUESTS TO CHARGE

If you find that inadequate warning was given by the police car either because no siren was ever sounded or that it was not sounded in sufficient time to enable the driver of the plaintiff's automobile to avoid the collision, you may find for the plaintiff against the defendant City of New York.

If you find that the siren was sounded in sufficient time to enable the defendant Bliss as the driver of the automobile in which plaintiff was a passenger to avoid the collision, and that his failure to so avoid the collision and yield the right of way was the proximate cause of the occurrence herein, you may find for the plaintiff against the defendant Bliss.

If you find that the negligence of the City of New through the actions of its police officers concurred with the defendant Bliss, you may find against both of these defendants in favor of the plaintiff. For example, if you find that the City was negligent by reason of its police officers' commencement and/or continuance of this chase without regard for the safety of others and that defendant Bliss was also negligent in failing to yield the right of way after hearing the siren which was audible to him in sufficient time for him to safely yield the right of way, and both of their respective negligent acts were proximate causes of the accident, you must find for the plaintiffs against both defendants, the City of New York and Robert Bliss.

Plaintiffs further contend that the Vehicle and Traffic Law discussed herein, makes it clear that the exemption and right of way privileges given to the peace officer are

secondary to the care owed users of the highway. By granting exemptions from traffic regulations to the police in their pursuit of traffic violators, the legislature did not intend to make the apprehension of the law violator of primary concern to the pursuer. It intended that the safety of other users of the highway be of foremost concern.

It is plaintiffs' contention that the police should have recognized that the continued course of pursuit would result in evitable and probably fatal disaster and should have considered whether their high speed pursuit was acting upon the mind of a driver that they depict as aberrant and thus caused the extreme speed and grossly reckless behavior of the driver.

It is plaintiffs' contention that the high speed pursuit where it became clear that the pursued did not intend to stop, after the alleged abortive attempt to stop the driver, impelled and aggravated the pursued's reckless conduct and to that extent was a proximate cause of a foreseeable collision.

Accordingly, if you find that the police conduct in light of all the circumstances unreasonbly endangered life or property, then you must find that the police officers were negligent with respect to the chase.

PLAINTIFF'S REQUESTS TO CHARGE

PLAINTIFFS REQUESTS TO
CHARGE #2

2. The New York City Police Department maintains a Patrol Guide outlining the duties and responsibilities of patrol police officers which provide in part as follows:

> "21. Operate car in manner to avoid injury to person or damage to property.
>
> 22. Drive at a slow rate of speed except under exceptional circumstances or extreme emergency.

Plaintiffs contend herein that defendant, the City of New York, through the actions of its police officers, violated the foregoing rule of the Department in that they operated their police vehicle at an extremely high rate of speed where the circumstances were not exceptional nor of extreme emergency.

Plaintiffs further contend that the said violation constitutes evidence of the City's negligence that was a proximate cause of the accident herein.

PLAINTIFF'S REQUESTS TO CHARGE

PLAINTIFFS REQUESTS
TO CHARGE # 3

3. The evidence establishes that there is no issue in this case as to any contributory negligence on the part of the plaintiffs, both of whom were passengers in the limousine of defendant Bliss. You are accordingly instructed as a matter of law that this issue has been resolved against the defendants and in favor of the plaintiffs by the Court and is not to be considered by you in your deliberations.

PLAINTIFF'S REQUESTS TO CHARGE

PLAINTIFFS' REQUEST
TO CHARGE #4

4. If you decide for the plaintiff on the question of liability, you may include in your verdict an award for the injury you find that she suffered and for conscious pain and suffering which you find to have been caused by the negligence of the defendants. The plaintiff is entitled to recover a sum of money which will justly and fairly compensate her for her injury and for her conscious pain and suffering.

If you find that any of plaintiff's injuries are permanent, you must make such allowance in your verdict as you think that circumstance warrants, taking into consideration the period of time that has elapsed from the date of the injury to the present time and the period of time plaintiff can be expected to live. In this connection it is pointed out to you that plaintiff is now 21 years of age and according to the mortality tables has a life expectancy of 55.9 years. Such tables are, of course, nothing more than statistical averages. They neither assure the span of life that I have given you nor

assure that the span of plaintiff's life will not be greater. The life expectancy figure I have given you is not binding upon you, but may be considered by you together with your own experience and the evidence you have heard concerning the condition of plaintiff's health, her habits, employment and activities in determining what the plaintiff's present life expectancy is.

If you find that plaintiff is entitled to recover in this action, she is entitled to recover the amount of her reasonable expenditures for medicines and medical services, including physicians' charges, nursing charges, hospital expenses and x-ray charges. If you find for the plaintiff, you will award her that amount which you find from the evidence to be the fair and reasonable value of the expenses necessarily incurred as a result of her injuries. If you find that the injuries plaintiff sustained are permanent, and that she will be required to undertake medical, hospital or nursing expenses in the future, you may include in your verdict a sum for thos anticipated medical, hospital and nursing expenses which are reasonably certain to be incurred in the future.

PLAINTIFF'S REQUESTS TO CHARGE

PLAINTIFFS REQUESTS
TO CHARGE #5

5. Plaintiff Steven Baker request the same charge as to damages as is outlined in # 4 included herein. The following modification should be made however with respect to his age and life expectancy: plaintiff Steven Baker is currently years of age and has a life expectancy of years.

EXTRACT OF CLERK'S MINUTES

At a Stated Term of the United States District Court for the Southern District of New York, held in the United States Court House in the Borough of Manhattan, City of New York on the day of in the year of our Lord, One Thousand Nine Hundred and

PRESENT:
HONORABLE: DUDLEY B BONSAL
United States District Judge.

JULIE BAKER BY HER NATURAL GUARDIAN LOUIS BAKER. LOUIS BAKER AND STEVEN BAKER

vs.

THE CITY OF N.Y. ROBERT E. BLISS STUART M. SCHILLER LEE E JOHNSON

Docket No. 74 CIV 4693

Now comes the Plaintiff By HARRY LIPSIG P.C. BY ROBERT G. SULLIVAN

and moves the trial of this cause. Likewise comes the Defendant by CITY OF N.Y. CORP COUNSEL BY JAMES CARROLL BLISS BY GOLDSTEIN + ISAACS BY MICHAEL DORFMAN. SCHILLER BY AYRIN LEFFS HERMAN BY ANTHONY MAHONEY

Thereupon a Jury is duly empaneled and sworn, and the cause proceeds to Trial.

FEB 24 1977, FEB 25 1977 TRIAL CONTD, CASE DISMISSED AGT DEFT. SCHILLER MAR 1 1977 TRIAL CONTD, ALL PARTIES REST. MOTIONS TO DISMISS ARE DENIED BONSAL SUMMARIES BY COUNSEL, CHARGE BY COURT MARSHALS SWORN, JURY VERDICT IN FAVOR OF PLAINTIFF AGAINST CITY OF N.Y IN THE AMOUNT OF $175,000 SEE COUNTS 1 & 1

(AN EXTRACT OF THE MINUTES)

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SPECIAL VERDICT

1. Was the defendant City of New York negligent in connection with the collision on December 23, 1973 at the intersection of Lexington Avenue and 80th Street?

✓ Yes ___ No

2. If your answer to Question 1 is "Yes", was the negligence a proximate cause of the collision?

✓ Yes ___ No

(If your answer to either Question 1 or 2 is "No", your verdict will be for the defendant City of New York. If your answers to both Questions 1 and 2 are "Yes", your verdict will be for the plaintiff Julie Baker against the defendant City of New York.)

3. Was the defendant Robert E. Bliss negligent in the operation of the black limousine in connection with the collision on December 23, 1973 at the intersection of Lexington Avenue and 80th Street?

___ Yes ✓ No

4. If your answer to Question 3 is "Yes", was the negligence a proximate cause of the accident?

___ Yes ___ No

(If your answer to either Question 3 or 4 is "No", your verdict will be for the defendant Robert E. Bliss. If your answers to both Questions 3 and 4 are "Yes", your verdict will be for the plaintiff Julie Baker against the defendant Robert E. Bliss.)

5. If your verdict is for the plaintiff against either of the defendants, what were the total damages sustained by plaintiff Julie Baker as a result of the collision?

$ 175,000

6. If you find that both defendants were negligent:

a. What was the percentage of negligence attributable to the defendant City of New York? ___ %

b. What was the percentage of negligence attributable to the defendant Robert E. Bliss? ___ %

(a and b must add up to 100%)

OSCAR N. WAITFIELD

Foreman

NOTICE AND MOTION TO SET ASIDE VERDICT AND JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X----------X

JULIE BAKER, an infant, by her parent and natural guardian, LOUIS BAKER, LOUIS BAKER, individually, and STEVEN BAKER,

Plaintiffs,

-against-

THE CITY OF NEW YORK, ROBERT E. BLISS, STUART V. SCHILLER, LEE R. JOHNSON and WALDORF ASTORIA HOTEL,

Defendants.

X----------X

74 Civ. 4693 (DBB)

NOTICE AND MOTION

TO: HONORABLE DUDLEY B. BONSAL
DISTRICT JUDGE

In accord with Rule 50, F.R.C.P., and within ten (10) days of the entry of judgment against The City of New York for $175,000.00,

NOW, comes the City of New York, having made a motion for a directed verdict at the close of all the evidence, and makes a motion to have the verdict and the judgment set aside and to have judgment entered in accord with the City's motion for a directed verdict, or in the alternative, praying for a new trial.

The motion is returnable ten (10) days from the date hereof.

The motion is made on the following grounds:

(a) The verdict was against the weight of the credible evidence;

(b) The verdict was contrary to law; and

(c) The verdict was excessive.

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NOTICE AND MOTION TO SET ASIDE VERDICT AND JUDGMENT

A. FACTS

According to the credible evidence, the plaintiff, JULIE BAKER, a teenage passenger in a limosine, was injured, along with other passengers, when the limosine was struck broadside at an intersection by a Thunderbird going through a red traffic light at an excessive rate of speed.

The collision occurred on December 23, 1973, at about 2:00 A.M., as the limosine was proceeding east on 80th Street, Manhattan, through Lexington Avenue on a green light and the Thunderbird was proceeding south on Lexington Avenue in the left hand lane next to the cars parked at the east curb, into the 80th Street intersection against a red light.

A radio emergency patrol vehicle (R.E.P.) of the Police Department had been following the Thunderbird from 1st Avenue and 82nd Street, where the Thunderbird had gone through a red light, down 83rd Street to Lexington Avenue, where the Thunderbird stopped for a red light behind other autos. When the recorder in the police vehicle, a Plymouth Station Wagon, converted into an emergency patrol car, got out and went around in front of the Thunderbird, the Thunderbird steered at the recorder, Patrolman Jaques, turned south on Lexington Avenue and sped south from 83rd Street to 80th Street where the collision occurred. The Radio Emergency Patrol car (R.E.P.) pursued the Thunderbird, after turning on the red dome light and sounding the s ren continuously.

When the Thunderbird collided with the limosine, Patrolman Gallagher, the operator of the police emergency

vehicle, brought his vehicle to a stop right at the intersection of Lexington and 80th, with the nose of the police vehicle either just at 80th Street or possibly a foot or so into the intersection.

Can that be classified as a high-speed chase? It is submitted by the undersigned that a pursuit of three (3) short city blocks in Mid-Manhattan on an early winter's morning where the police car is brought to a stop in three (3) to five (5) car lengths, even though a speed of 60 m.p.h. (or even 70) was attained for a few seconds, is not a high speed chase.

However, high speed chase or not, the police officers were not negligent, under those facts.

Robert Bliss, the owner and operator of the limosine, testified that as he entered 80th Street from Park Avenue to go east, there were no cars in front of him for a block, that he proceeded east on 80th Street at about 20 m.p.h., with four (4) passengers in the back seat, four (4) passengers in the two (2) jump seats and two (2) passengers in the front with him, and all the windows closed, that he "must have" gotten a green light half way between Park and Lexington, and entered the intersection on a green light, that he saw a car almost on top of him at his left and a flashing red light about a block up Lexington to his left, that he heard no siren, that he did not put on his brakes or turn his wheels and that his limosine was struck broad-side at the left rear door.

Michael Ferder, a young man who came forward as a disinterested witness, testified that he had parked

his auto on 82nd Street just east of Lexington early on December 23rd, that he heard the police siren, that he and his date went to the corner of Lexington and 82nd because of the police siren and saw a Thunderbird speed by southerly, that they crossed Lexington, that some time around then he saw the police car going south with flashing red light and then he heard the collision.

Ferder testified further that the police car was stopped right at the intersection, possibly the nose of the police car was just into the intersection.

On the hypotheticals to the two retired New York City Police inspectors who testified that they would have acted differently under the circumstances, it was assumed that the police car (R.E.P.) was showing a flashing red light going down Lexington Avenue and sounding the siren going down Lexington Avenue.

The hypotheticals to the retired New York City Police inspectors who testified in favor of the plaintiffs also assumed that at 83rd Street near Lexington Avenue, the Thunderbird had steered at the recorder, Patrolman Jaques, and forced him to jump back onto the hood of a parked car.

The testimony of the two police officers, Patrolman Gallagher, with thirteen (13) decorations for outstanding police work, and Patrolman Jaques, who was almost killed at 83rd Street, substantiates the facts that demand a directed verdict in favor of the City of New York.

Incidentally, the evidence was unanimous that both Patrolman Gallagher and Patrolman Jaques responded instantaneously to the cries of the limosine passengers, using emergency equipment from R.E.P. to extricate the passengers.

Michael Ferder testified the two patrolman worked at the scene for two hours extricating the passengers and during that time, when danger of the limosine exploding

was apparent, warned everyone away, but continued on with their rescue work.

A verdict against The City of New York based on the alleged negligence of Gallagher and Jaques should be set aside on the facts.

B. LAW

> "A municipality is not to be held liable for the act of its police officers in undertaking a pursuit of a traffic violator. The police have a duty to undertake the pursuit. If the officers conduct the pursuit using their best judgment as to the most effective means of dealing with the violator no liability will attach to their acts, even though hindsight might disclose alternate methods that may have been safer for the public bystanders. Stanton v. State of New York, 29 A.D. 2d 612, 285 N.Y.S.2d 964, aff'd 26 N.Y.2d 990, 311 N.Y.S.2d 28, [illegible] .2d 494.)"

is an excerpt from Thai[illegible] The City of New York, 35 A.D.2d 585, aff'd 30 N.Y.2d 524 (1972) and constituted the City's Number 3 Request to Charge (which was denied).

Thain was injured when his auto was hit at an intersection in Brooklyn by another auto being pursued by police for a traffic violation. The fleeing auto ran through 16 red lights, the police vehicle was unmarked and neither Thain nor several bystander eyewitnesses heard a siren or saw a red light.

In sustaining a judgment for Thain, the Appellate Division also stated in its Memorandum by the Court:

> "We are of the opinion that the failure of the police to sound the siren and flash the lights was negligence and under the facts of this case was a concurrent proximate cause of the accident".

Stanton v. The State of New York, 26 N.Y.2d 990 (1970) involved a rather bizarre chase by a trooper southerly in the northbound lanes of Route 17 of Sullivan County at speeds up to 100 m.p.h. with the trooper weaving in front

of the chased vehicle at times. In affirming a dismissal of the complaint, the Court of Appeals of New York stated in part in its memorandum:

> "While it is most unfortunate that bystanders are sometimes innocently involved and injured by police in the performance of their duties, such emotional and understandable human considerations are not a substitute for proof of negligence"

On the law as enunciated in Thain, supra, and Stanton, supra, the City's motion for a directed verdict should be granted.

C. EXCESSIVE

Julie Baker, the plaintiff, now 21, sustained a fractured hip and other injuries and was confined to Lenox Hill Hospital for about a month. The fracture was treated by traction essentially, with pills for pain. She left the hospital on crutches, and returned home to Missouri, where she received other treatment. She lost a term at her community college and her bills here were $7,000.00, including about $6,000.00 for Lenox Hill Hospital. Her doctors in New York testified she has a shortening of one leg and will probably develop arthritis as she grows older. Under cross-examination, the doctor stated it is not unusual for a person to have one leg a little shorter than the other and that the extent of arthritis in the future is speculative.

Julie Baker herself did not limp nor did she use a cane. She did not appear to be affected by the shortening of one leg. She made no mention of special shoes or other corrective devices. She did testify she has had dreams about the accident but she did not testify as to psychological or psychiatric care.

Under the circumstances, the City of New York submits that a verdict of $175,000.00 is excessive and should be reduced or set aside.

CONCLUSION

THE VERDICT AND JUDGMENT FOR $175,000.00 SHOULD BE SET ASIDE AND THE CITY'S MOTION FOR A DIRECTED VERDICT GRANTED IN ITS FAVOR, OR IN THE ALTERNATIVE, A NEW TRIAL SHOULD BE GRANTED.

W. BERNARD RICHLAND
CORPORATION COUNSEL
Attorney for the Defendant,
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New York, New York 10007

By: _____
J. M. CARROLL
Trial Attorney

TO: LIPSIG, SULLIVAN, etc., Esqs.
Attorneys for Plaintiff
100 Church Street
New York, New York 10007

GOLDSTEIN AND ISSAC
Attorneys for Defendant, ROBERT E. BLISS
127 John Street
New Yorb, New York 10038

AFFIDAVIT IN OPPOSITION TO MOTION TO SET ASIDE VERDICT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JULIE BAKER, an infant, by her parent and natural guardian, LOUIS BAKER, LOUIS BAKER, individually, and STEVEN BAKER,

Plaintiffs,

-against-

THE CITY OF NEW YORK, ROBERT E. BLISS, STUART V. SCHILLER, LEE R. JOHNSON and WALDORF ASTORIA HOTEL,

Defendants.

AFFIDAVIT IN OPPOSITION

74 Civ. 4693

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

MICHAEL N. DORFMAN, an attorney duly admitted to practice law in the Courts of this State, being duly sworn, deposes and says:

That I am associated with GLADSTEIN & ISAAC, ESQS., Of Counsel to JAMES E. HANNON, ESQ., attorney for the defendant, ROBERT E. BLISS, and am fully familiar with the facts and circumstances of this action.

This affidavit is respectfully submitted in opposition to the defendant, CITY OF NEW YORK's, application to have the verdict and judgment set aside in this action.

This matter was tried before the Honorable Dudley B. Bonsal and a jury of six on February 24th, February 25th and March 1, 1977. After due deliberation, the jury rendered a verdict on behalf of the plaintiff, JULIE BAKER, against the defendant, THE CITY OF NEW YORK, and a verdict in favor of the defendant, ROBERT E. BLISS, against the plaintiff.

This action arises out of a motor vehicle accident which

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&
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OHN STREET
K, N.Y. 10038

AFFIDAVIT IN OPPOSITION TO MOTION TO SET ASIDE VERDICT

occurred on December 23, 1973 at the intersection of 80th Street and Lexington Avenue, New York, New York. The plaintiff herein was a passenger in a Cadillac limousine owned and operated by the defendant, ROBERT E. BLISS. This vehicle was struck broadside, while proceeding eastbound on 80th Street at a slow rate of speed with the green traffic light in its favor, by a Ford Thunderbird which was being pursued by a Police vehicle.

The defendant, ROBERT E. BLISS, testified that as he entered the intersection he saw the other vehicle almost on top of him coming at a fast rate of speed against the traffic light, and turned the wheels of his car to the right in an attempt to avoid the impending impact. He was not able to do so, and the left side of his vehicle was struck by the front of the Thunderbird. Photographs of both vehicles following the occurrence were introduced into evidence at the trial indicating the points of contact and the severity thereof.

There was conflicting testimony as to whether or not the siren and/or red dome light of the Police vehicle were on at the time of and prior to the occurrence. With regard thereto, it is worthy to note that the plaintiff, JULIE BAKER, and the other passengers in the limousine, all of whom were injured and have pending lawsuits against ROBERT E. BLISS, among others, stated that they did not hear a siren, see a flashing red light, nor did they see the Thunderbird before impact.

In addition, this occurrence was observed by Police Officer Frances Gallagher, the driver of the Police vehicle involved in the chase on Lexington Avenue. Patrolman Gallagher stated that he was approximately seventy-five feet from the point of impact and had a clear view thereof. The Patrolman testified that he thereafter prepared a Police accident report, which was marked into evidence and a copy of

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ISAAC
OHN STREET
RK, N.Y. 10038

AFFIDAVIT IN OPPOSITION TO MOTION TO SET ASIDE VERDICT

which is annexed hereto, in which he indicated that the defendant ROBERT E. BLISS, in no way contributed to the happening of this accident

Thus, we are confronted with a situation where both the plaintiff and the co-defendant testified under oath that the defendant, ROBERT E. BLISS, was not negligent in the operation of his motor vehicle and did not contribute to the happening of this accident. Is it therefore surprising that the jury reached the same conclusion?

It is a well established principle of law that the jury is the trier of facts and it is solely within the jury's purview to pass upon the weight of the evidence and the credibility of witnesses who testify on trial. McFall v. Compagnie Maritime Belge S.A., 107 N.E.2d 463, 304 N.Y. 314; Wragge v. Lizza Asphalt Construction Co., 270 N.Y.S.2d 616, 17 N.Y.2d 313.

In the instant case, the jury made its determination after hearing the testimony of witnesses produced by the parties, and this determination should not be overturned without just cause.

In reiteration, it is respectfully submitted that the jury's verdict that "the defendant ROBERT E. BLISS was not negligent in the operation of the black limousine in connection with the collision on December 23, 1973 at the intersection of Lexington Avenue and 80th Street was based upon all of the credible evidence presented herein and clearly should not be set aside as contrary to the facts and/or law.

WHEREFORE, your deponent respectfully prays for an Order denying the instant Motion in its entirety.

GLADSTEIN & ISAAC
Attorneys for Defendant
ROBERT E. BLISS
127 John Street
New York, New York 10038

By: Michael N. Dorfman
MICHAEL N. DORFMAN
Trial Attorney

Sworn to before me this
18th day of March 1977

JOSEPHINE DUELL
Notary Public, State of New York
Qualified in Richmond County
No. 43-6111330
Commission Expires March 30, 1978

LAW OFFICES
GLADSTEIN
&
ISAAC
127 JOHN STREET
NEW YORK, N.Y. 10038

Bonsal, J.

U.S. DISTRICT COURT
FILED
MAR 3 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

JULIE BAKER

Plaintiff : 74 Civil 4693 (DBB)

-against- :

THE CITY OF NEW YORK, ROBERT E. BLISS, STUART M. SCHILLER, LEE E. JOHNSON : JUDGMENT

Defendants : #217 334

- X

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Dudley B. Bonsal, United States District Judge, and a jury, on February 28, 29 and March 1, 1977, and the Court having submitted the attached special questions to the jury, and the jury having answered the said questions, and the jury thereafter having returned a verdict in favor of the plaintiff Julie Baker as against the City of New York only, it is,

ORDERED, ADJUDGED and DECREED: That plaintiff JULIE BAKER have judgment against defendant THE CITY OF NEW YORK, in the amount of $175,000., and it is further,

ORDERED, ADJUDGED and DECREED: That the complaint be and it is hereby dismissed as to the remaining defendants.

Dated: New York, N.Y.
March 1, 1977

Raymond F. Burghardt 3/3/77

APPROVED:

Dudley B. Bonsal
U.S.D.J.

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NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JULIE BAKER,	:	NOTICE OF APPEAL
Plaintiff,	:	74 CIVIL 4693 (C. B. B.)
-against-	:	
THE CITY OF NEW YORK, ROBERT D. BLIGS, STUART M. SCHILLER, LEE E. JOHNSON,	:	
Defendants.	:	

S I R S :

Notice is hereby given that the defendant, CITY OF NEW YORK hereby appeals to the UNITED STATES COURT OF APPEALS for the second circuit from the judgment entered herein on March 3, 1977 which ordered, adjudged, and decreed that the plaintiff recover from the defendant, CITY OF NEW YORK the amount of $175,000.00 and this appeal is taken from each and every part of said judgment as well as from the whole thereof.

Dated: New York, NY
March 18, 1977

Yours etc.,

W. BERNARD RICHLAND
Corporation Counsel
of THE CITY OF NEW YORK
Attorney for
THE CITY OF NEW YORK
Office & P.O. Address:
Municipal Building
New York, NY 10007

By _____
STUART ADLER

NOTICE OF APPEAL

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Brooklyn, NY

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DIRECT EXAMINATION

BY MR. SULLIVAN:

Q MR. Bliss, on December 23, 1973, you were involved in an automobile accident while you were driving your black Cadillac limousine, correct?

A That's correct.

Q And you had a number of these people as passengers, did you not?

A Yes, I did.

Q Where did you pick these people up?

A The Waldorf-Astoria, the Park Avenue entrance.

Q Who was the owner of this limousine that you were driving?

A I believe it was under my name.

Q Did you work for a company or were you an independent operator?

A Independent operator.

Q From the Waldorf-Astoria until the point where you reached 80th and Lex, did you make any stops to drop people off or for any other reason?

A None whatsoever.

Q Did there come a time when you approached 80th and Lex?

A Yes, sir.

Q As you approached 80th and Lex, Mr. Bliss, when you were 100 feet away --

THE COURT: Wait a minute. Tell us what happened when you got to 80th And Lexington, Mr. Bliss.

THE WITNESS: I can tell you the complete story very briefly, your Honor.

I picked these people up coming out of the hotel. We entered the limousine and I drove down Park Avenue. I made a right turn off of Park Avenue going east on East 80th Street and as I proceeded down 80th Street, I got a complete green light telling me that I had a right of way going down the street where I wouldn't have to --

THE COURT: The green light at what street?

THE WITNESS: 80th and Lexington Avenue, your Honor.

THE COURT: You saw a green light--

THE WITNESS: The light must have changed. To my recollection I don't remember if it was red or green going down. It must have changed at the time.

MR. SULLIVAN: I object, your Honor, to anything that "must have" happened.

THE COURT: Yes. Don't tell us anything that must have happened. You were telling us you were going

down 80th. You said there was a green light.

THE WITNESS: There was a complete green light, your Honor. I was going maybe at the rate of 15, 20 miles an hour. Normal for that particular area.

THE COURT: Don't tell us what is normal.

THE WITNESS: As I was proceeding ahead, your Honor, as I come into the intersection there is a store on the lefthand side which is like a little blind until you get out into the street itself and 15, 20 miles an hour - I looked to my left. At that time when I looked to my left, the car was going forward. By the time of impact I seen this car coming down at a high rate of speed. I looked to my left. All I could say is, "Oh, God," and I know the car was going to be hit. That's all.

THE COURT: Where did it hit?

THE WITNESS: It hit me broadside right behind my left shoulder, the partition between the two doors there.

THE COURT: Between the two lefthand doors of the limousine?

THE WITNESS: Between the rear of the front door and the beginning of the -- right behind the seats, I would say, over my shoulder.

Q Mr. Bliss, when you looked to your left and you

2 saw this car coming, did you see any flashing red light?

3 A I recollect I might have seen a red light to

4 my left. When I seen the car I could see one down

5 the street, that's it. I did see a light but it was at

6 least a block back.

7 Q Did you hear any siren?

8 A I heard no sirens. My windows were up in the

9 car.

10 THE COURT: When you say "the windows were up,"

11 you mean the windows were closed. It was December 23rd.

12 THE WITNESS: Right. It was a cold night,

13 your Honor.

xx 14 (Plaintiff's Exhibit 1 marked for

15 identification)

16 Q I show you Plaintiff's Exhibit 1 for identi-

17 fication, Mr. Bliss, and I ask you, is that a fair and

18 accurate representation of your car after the accident?

19 A I would say so. I was knocked out. I just

20 seen the car. That's the car.

21 MR. SULLIVAN: I offer Plaintiff's 1 for

22 identification, your Honor.

23 THE COURT: Show it to Mr. Carroll.

24 MR. CARROLL: May I have a voir dire, your

25 Honor?

THE COURT: He is asking you whether that picture is a picture of the limousine that you were driving that evening with the people.

Take a look at it, will you?

THE WITNESS: It looks like the same car. I don't know how to swear to it. I would have to say yes.

THE COURT: You can say it looks like your car?

THE WITNESS: It looks like it.

THE COURT: You say you can't swear to it because it was pretty well-damaged up?

THE WITNESS: I couldn't swear to it. I would say it looks like my car.

MR. CARROLL: I would object to it.

THE COURT: I will receive the exhibit and say to the jury he can't swear to it but he thinks it looks like the damage to his car.

xx (Plaintiff's Exhibit 1 received in evidence)

MR. SULLIVAN: Your Honor, may I show this to the jury?

THE COURT: Sure, but go ahead with your questions.

BY MR. SULLIVAN:

Q Mr. Bliss, the sirens that you just mentioned --

THE COURT: Wait. This is after the accident.

Why do we get into that?

MR. SULLIVAN: No further questions.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. CARROLL:

Q How long have you been driving an automobile, Mr. Bliss, approximately?

A 25 years. Say 20 years, I'm sorry.

Q Do you have a chauffeur's license?

A I had a chauffeur's license. I don't have one now.

Q Did you have a chauffeur's license at the time of the accident?

A Yes, I did.

Q How long, approximately, had you been driving this particular automobile?

A Maybe one year.

Q Did you have any other customers that evening prior to this incident?

A Yes, I did.

Q Where were you when you picked up the people that are in this courtroom?

A I was double-parked outside in front of the Waldorf-Astoria.

Q And approxmately what time did you pick them up?

A It must have been a little after midnight.

THE COURT: That's your best recollection?

THE WITNESS: Yes. The exact time I would have no idea. I know it was a little after midnight, your Honor.

Q How would you describe your automobile; such as a sedan, a limousine, five passenger, ten passenger?

A I would have to say it is a four-door limousine sedan-type car.

Q What is the regular capacity for passengers?

A Eight passengers and a driver.

Q Is there accommodation for eight passengers in the rear of the automobile where passengers usually sit?

A It's accommodations for six in the rear and two in the front.

Q Did you have anybody sitting beside you on this trip where the people here in the courtroom were riding with you?

A Yes, I did.

Q How many people in front with you?

A Two, sir.

4d

THE COURT: Two with you, sir?

THE WITNESS: With me was three.

Q As you were proceeding down 80th Street toward Lexington, approximately what time would that be?

A It was after 12 o'clock. I don't have any idea or recollection of time. I would say it was between 12:00 and 1:00 o'clock.

THE COURT: That is your best recollection?

THE WITNESS: Yes.

Q And how many avenues do you have to cross or did you have to cross from the Waldorf-Astoria until you got to Lexington?

A The Waldorf is 50th Street. I went from 50th to 80th Street.

THE COURT: That's on Park Avenue?

THE WITNESS: Yes, your Honor. I made my right turn on 80th Street and from then on I didn't cross nothing.

Q Is the next avenue over Lexington Avenue?

A Yes, it is.

Q As you made your turn from Park Avenue into 80th, was there a traffic light there?

A There is a traffic light on Lexington Avenue, right.

THE COURT: He wants to know on Park Avenue.

THE WITNESS: There is a traffic light there also.

Q Do you recall what the condition of the traffic light was?

A When I made my turn?

Q At Park Avenue.

A Green.

Q Green. And when you turned to go down 80th Street from Park Avenue, were there cars ahead of you between Park Avenue and Lexington?

A No, sir.

Q Approximately how long is that block from Park Avenue to Lexington?

A I would say a thousand feet, maybe more, 1500.

Q Would that be about 500 yards?

A That's correct. I don't know. I am just guessing on that.

Q Did you say there were or were not automobiles from Park Avenue to --

A Excuse me, would you start that question again?

THE COURT: You already testified there was nobody in front of you when you were going along 80th Street. He already testified to that.

Q In other words, when you turned and made your entrance onto 80th Street, could you see all the way down to Lexington?

A Yes.

Q And there were no cars in front of you?

A No, sir. Only parked cars on the street. There might have been cars parked on 80th Street.

Q As you proceeded down 80th Street toward Lexington, you told us something about the light ahead of you.

A Yes.

Q Will you repeat that?

A What I can recollect, the light might have been red because --

Q No, not because. Just say what happened.

A I am saying, because of the fact as a driver, I watch the lights in front of me and I try to see what the light is going to be, the capacity of the light, so if I do get to an intersection and I may have to stop because the light may change. Driving as long as I have been driving in New York, I have a general idea of how the lights manage to change and how long they take. As far as I could recollect, the light must have been red as I was going down 80th Street, midway through the block it

must have turned to green because --

Q Let me stop you there, Mr. Bliss.

MR. SULLIVAN: Your Honor, I object to that. Can the witness finish his answer?

THE COURT: No. Try to answer the questions. I think what you are telling us is when you turned on 80th Street, you observed the light at that time was red and then you say because of your experience in these things, you say it changed while you were going down the block to green, is that right?

THE WITNESS: Exactly.

Q With all due deference to his Honor, I think you said it must have changed.

Is there a difference between it did change and it must have changed?

A There has to be a difference because I can only recollect where I can't make a true statement.

Q So that really you don't know when it changed, do you?

A I can't say I recollect, no.

Q When for the first time, as you sit here now, can you state definitely that you saw that it was green; where was your automobile?

A I would say my automobile is going down 80th

Street. I know when I approached it, I had a complete green light.

THE COURT: I think he wants to know when you say you approached it, how far were you from the intersection?

Q When you first saw that it was green.

A I would have to say I was all the way into the intersection, everything was still green. Until the point of impact it was still green, as far as I recollect.

Q As far as you recollect?

A Yes, it was green. I'll put it that way. It was green.

Q As you approached Lexington Avenue and as you entered the intersection -- incidentally, approximately how wide is Lexington Avenue?

A I would say maybe 150, 100, 150 feet.

Q Does the traffic go north and south?

A No, it just goes south.

Q Is there any divider?

A On Lexington?

Q Right.

A In what respect?

Q Any dividing --

A No.

Q Like Park Avenue?

A No, sir.

THE COURT: Is the question you want to know how many lanes there are on Lexington?

Q Yes, how many lanes on Lexington Avenue?

A With no cars parked, I would say three to four lanes.

Q If no cars are parked?

A Right.

Q If cars are parked on each side, how many lanes of traffic?

A I have known to see two lanes on Lexington already with cars parked.

Q As you entered Lexington Avenue, did you look to your left?

A Yes, I did.

Q What did you see?

A I seen a car coming on top of me at a high rate of speed.

Q What color was it?

A I have no idea.

Q Did you see any car parked at the westerly side of Lexington Avenue?

A I do not recollect.

2 Q Did you look to your right?

3 A No, sir.

4 Q Across the street on Lexington Avenue uptown,

5 did you see any cars parked at the curb of --

6 A I wouldn't recollect.

7 THE COURT: You don't recall?

8 THE WITNESS: I don't recall.

9 Q So that you really don't know whether there were

10 any cars parked there, do you?

11 A It wasn't in my mind to observe what was

12 parked.

13 THE COURT: He doesn't recall whether there

14 were any cars parked.

15 Q So there may have been or there may not have

16 been?

17 A Exactly.

18 Q So at least that part you don't know?

19 A Right.

20 Q You are not sure when the light changed green?

21 MR. DORFMAN: Your Honor, this was asked and

22 answered already.

23 THE COURT: I will allow this question.

24 If you recall, you were going down from Park

25 to Lexington.

THE WITNESS: Yes.

THE COURT: And you say the light was red when you started down and somewhere along it changed to green.

I think the question is: Do you remember where you were when it changed to green?

THE WITNESS: To my recollection I would have to say I was at least three-quarters of the way down 80th Street.

THE COURT: Three-quarters of the way down the block, during the last quarter of the block between Park and Lexington, the light changed to green?

THE WITNESS: Right.

THE COURT: All right.

Q Approximately how far between 81st and 80th Street was the southbound car when you first saw him?

A When I come into Lexington Avenue intersection, the car was no more from maybe where your Honor sits to where I am, I would say when I first saw the car. That might have been far before the impact because I am going 15 miles an hour, 20. I would have to say if I saw him now, by the time I got 5 feet, 10 feet, he was on top. There was no way in the world I could do anything.

Q You had just entered Lexington Avenue when you saw the southbound car?

A I would say I would have to be out above the corner because the corner there is almost like a blind corner because it is very narrow around the corner, there is a store, if I recollect, and you cannot see up into the street so evidently there may have been cars parked there, I don't know, but I didn't get a clear shot at the guy until I had turned and I could get a vision down the street and he was already on top of me.

Q Mr. Bliss, as you entered Lexington Avenue, I believe your testimony is, and correct me if I am wrong, that there may or may not have been cars parked at your lefthand side on Lexington Avenue?

A I made that statement. I could not recollect cars being parked either side on Lexington.

Q Then you saw coming down Lexington -- coming down Lexington Avenue, a white car --

THE COURT: He didn't say it was white.

MR. CARROLL: I am sorry, your Honor. That is correct.

Q You saw a car southbound. Is that the car that hit you?

A Yes.

Q Would you repeat again how far that car was from 81st Street to 80th Street when you first saw it?

MR. SULLIVAN: Your Honor, I object. Every question is: Would you repeat again?

They have all been asked and answered.

THE COURT: Wait a minute. I don't think I understand that question.

MR. CARROLL: Withdrawn, your Honor.

THE COURT: I take it what you are interested in knowing is how fast was this car coming down Lexington Avenue when he first saw it, is that your question?

Q How far from 80th Street was that car when you first saw it?

A I said from about from where his Honor sits to where I am.

Q Did you put on your brake right that second?

A There was nothing I could have done.

Q I asked you a question.

THE COURT: Answer the question.

A I said there is nothing I could have done.

Q Did you put on your brake?

A Probably. I don't know what I done.

Q Did you blow your horn?

A There is nothing I could do. I just looked to

my left, I said, "Oh, God," and boom.

Q Isn't it your testimony that you saw that car as you entered the intersection?

A I said I saw that car when I looked to my left.

Q As you entered the intersection?

A I said I got hit in the intersection. So it must have been before I entered the intersection.

Q That you saw the automobile?

A Must have been.

Q Did you stop?

A How could I stop?

Q I am just asking you, did you put your brake on?

THE COURT: If you recall.

THE WITNESS: I don't remember, your Honor.

THE COURT: You don't recall?

THE WITNESS: I don't recall.

THE COURT: He doesn't remember.

Q As you proceeded across the intersection and this car that hit you was coming toward you from your left, how far did you proceed into the intersection before the car hit you?

A I don't know. A couple feet.

Q Which side of the street was the automobile on, the car that hit you?

A Which side? He was proceeding south.

Q And was he on the-- as you proceeded --

THE COURT: I think what he is asking you is: Do you recall whether the car, when you first saw it, was it in hte middle of Lexington or was it on one side?

A I would say it was coming down the middle of Lexington Avenue.

THE COURT: That is your best recollection?

THE WITNESS: Yes, sir.

Q Where in relation to Lexington Avenue were your front wheels when the car hit?

A I was -- front wheels were pointed directly eastbound. When I got hit on impact, I could probably remember turning my wheels to the right.

Q That was after you got hit?

A When I knew I was going to get hit I probably tried to turn the car.

THE COURT: You haven't a clear recollection but that would be your, you think that would be a thing you might have done?

THE WITNESS: Exactly.

Q But you can't state definitely that you did?

A As far as I know, I am going straight, the wheels are straight.

Q No evasive action?

A On reflection on what's going to happen, probably instinct made me go down --

Q No, your testimony, as I understand it, and correct me if I am wrong, is that you were going straight ahead, your wheels were straight ahead and the car was coming from your left?

MR. SULLIVAN: Your Honor, I object. We get a summation after every answer.

THE COURT: No. Don't worry about that.

Q Am I wrong there, Mr. Bliss?

THE COURT: No, please.

Let's not keep repeating all this stuff we have been through.

Q As you were telling the judge how the accident happened, you mentioned a red light up toward 80th Street.

THE COURT: Let's not get this all off the trolley. He said as he turned on to 80th Street from Park --

MR. CARROLL: No, your Honor, I am talking about the flashing red light now.

Q You saw the police car up there?

A I saw a light as I looked up because all Lexington Avenue is clear. There were no cars.

Q You saw a --

A I saw a red ball. I didn't hear no siren.

Q But you saw the red ball flashing around?

A A block and a half down I seen it because as I looked through the car I could see through my eye another car.

Q About a block and a half away?

A I didn't know what car, all I know I saw a flashing light.

Q That car was a block and a half away?

A Right.

Q I think you testified that the windows of your automobile were up?

A That's right.

Q Was that all the windows?

A Yes, sir.

Q Did you see that flashing red light on the police car at the same time that you saw the automobile that hit you?

MR. DORFMAN: Objection, your Honor. He never testified it was on a police car.

THE COURT: Of course, it was a car with a red light is what you are asking about. He wants to know whether you saw that at the same time.

ROSE GREGORIO, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SULLIVAN:

Q Mrs. Gregorio, Fred and Joe were your two sons, correct?

A Yes.

Q Do you have any other children?

A No.

Q Were you at the engagement celebration with them that night?

A Yes, I was.

Q When you got into the limousine, where did you sit?

A I sat -

THE COURT: Did you get into the limousine, Mrs. Gregorio?

THE WITNESS: I did, your Honor.

THE COURT: OK.

You got into the limousine. What time was it?

THE WITNESS: Oh, I don't know. I can't remember what time it was.

Q Where did you sit in the limousine?

A I sat up front next to Mr. Bliss.

Q Was there anyone else in the front seat with you?

A Yes, Mr. Howard Camac.

Q Tell me everything that -- tell me what happened from a half a block before the accident --

THE COURT: Why don't we ask -- you got in and were sitting in the front seat. This is at the Waldorf?

THE WITNESS: When we came out of the Waldorf we entered the limousine.

THE COURT: Tell us from that time on what you observed.

THE WITNESS: All I can remember is we were just talking and laughing and that was it. Then I don't remember anything after that.

THE COURT: After the collision --

THE WITNESS: No. I don't remember anything.

THE COURT: Did you observe anything before the collision?

THE WITNESS: No.

THE COURT: You observed nothing at all?

THE WITNESS: Nothing at all. We were just talking. I was looking straight ahead as Mr. Bliss, he

was driving and looking straight ahead. Maybe once or twice I may have turned, I think to my left because my two boys were sitting in back of me.

Q Mrs. Gregorio, did you at any time up until the time the two cars crashed hear a siren?

A No, I did not.

Q Did you at any time up until the two cars crashed, see a red light at any time?

A No, I did not.

Q And after the accident, Mrs. Gregorio, were you taken to a hospital?

A Yes.

Q How long did you stay in the hospital?

A December 23rd until January 9th, and I was taken home from the hospital by ambulance.

MR. SULLIVAN: No further questions.

CROSS-EXAMINATION

BY MR. CARROLL:

Q Mrs. Gregorio, you never saw the car that hit you before it hit you, did you?

A Beg your pardon?

Q You never saw the car that hit your limousine, did you?

A No, I didn't.

Q You never saw it before it hit?

A No.

MR. CARROLL: Thank you.

MR. DORFMAN: I have no questions.

MR. MATTURRO: No questions.

THE COURT: Thank you, Mrs. Gregorio. You are excused.

(Witness excused)

MR. SULLIVAN: I call Mr. LaGana to the stand.

V I N C E N T L a G A N A, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SULLIVAN:

Q Mr. LaGana, were you with the group at the Waldorf that night?

A Yes, I was.

Q Tell me what happened from the time you walked out of the Waldorf?

A I have no recollection after leaving the Waldorf of what transpired.

THE COURT: You did get in the limousine?

THE WITNESS: Yes, I did, but I believe, due to the shock of the accident, I completely blacked out

into the City of New York.

Q The night of the 22nd, correct?

A Right.

Q Who were you with?

A I was with just my wife.

Q Did there come a time you parked it?

A Yes, I did.

Q Where did you park it?

THE COURT: What kind of a car did you have?

THE WITNESS: It was a 1972 Ford Thunderbird.

Q Where did you park your car?

A I parked the car on 82nd Street between First and Second Avenue.

THE COURT: Between First and Second?

THE WITNESS: Right.

THE COURT: Which side of the street? Do you remember?

THE WITNESS: I parked on the left side of the street. That was facing -- the car was facing eastbound. I parked on the left side of the street.

Q Where did you go with your wife?

A We went around the block to visit some friends. We went to their apartment.

Q When you parked your car, tell me what you did

with the car.

A We circled around the block a few times as we could not find a parking space. We went about halfway down 82nd Street, found a spot on the left side of the street. There was a, I vaguely recall a light overhead. I parked the car, locked the car, as I always do --

THE COURT: You locked the car?

THE WITNESS: Yes, I did.

THE COURT: You mean locked the doors?

THE WITNESS: Locked the doors. Took the keys and we proceeded to walk around the block.

Q The windows were up?

A Yes.

Q What time did you leave the friend's house you were visiting?

A I guess it was about 2:00, 2:15.

THE COURT: In the morning?

THE WITNESS: In the morning.

Q Did you have any occasion from the time you got into your friend's house until the time that you left it at about 2:25 to go out again or to see your car?

A We went out to dinner. We went to Chinatown and my friend drove.

Q Did you go to your car?

AFTERNOON SESSION

1:30 p.m.

(Jury not present)

THE COURT: Who are we missing here?

MR. SULLIVAN: Mr. Matturro, your Honor. I saw him about five minutes ago. He is here. I don't know where.

Here he is.

THE COURT: All right, bring in the jury.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

You may proceed, Mr. Sullivan.

MR. SULLIVAN: I call Donna Amarino to the stand.

C O N T E N T A D O N N A L U C C H E T T O, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SULLIVAN:

Q Your correct name today would be Mrs. Lucchetto, is that right?

A Right.

Q At the time of this accident, your name was

Q Did there come a time when the limousine then left the Waldorf?

A Yes.

Q Was everyone in it?

A Yes.

THE COURT: Where were you sitting?

THE WITNESS: In the back.

THE COURT: Sitting in the back of the limousine?

THE WITNESS: Yes, on the lefthand side.

Q On the back seat of the limousine across the back, the seat that you were sitting on, who was seated on those seats?

A In the back?

Q Yes.

A Myself, Cheryll, Diane and Julie.

Q So the four girls were along the seat that was in the back, correct?

A Yes.

Q Was there also somewhere else to sit in that limousine in the back behind the driver's seat?

A The pull-down seats that they have to accommodate extra passengers in the back.

Q Were they attached to the back of the driver's

2 seat?

3 A They fold. I don't know how they are actually

4 reinforced to the seat but I know they fold down.

5 Q Who were on those seats?

6 A First was Freddie, Joseph, Vincent and then

7 Steve.

8 Q Freddie and Joseph being the Gregorios?

9 A Right.

10 Q Vincent being Vincent LaGana and Steven being

11 Steven Baker, correct?

12 A Right.

13 Q Tell me what happened next?

14 A Where?

15 Q Your leaving the Waldorf. What happens?

16 A We are driving for a short while and I re-

17 member I saw the back of the driver's head and everyone

18 was talkign, not everyone, little dribs and drabs of con -

19 versation. Freddie made a comment, that he was sitting

20 next to his brother and we were talking, you know, just

21 little conversation and then something happened and all I

22 remember is picking up my head and I saw smoke and everybody

23 was out.

24 Q Do you know what it is that happened?

25 A I don't know what happened until I looked at

what was out there.

Q Prior to whatever happened, did you hear any sirens?

A No.

Q Prior to whatever happened, did you see any red lights?

A I was not focusing on the traffic.

THE COURT: You can answer the question.

A No, I didn't see any.

Q What happened to you after the accident?

A Meaning --

Q You personally?

A You want me to explain like how I got out of the car?

Q Yes.

A First I picked up my head and I saw smoke and I saw everyone out and I was afraid the car was going to go in flames so I was trying to pick up my legs and I was bound in by the seat in front of me. I knew I couldn't get out and I was just scared. I just stood there and all of a sudden, at the window, it was like seconds, I couldn't believe how fast it was, there were policemen. I was screaming for help. It is late out night, no one is out in the street and there was a cop. Then other police

A Yes.

Q And you have a suit against the City in another court regarding this accident, don't you?

A Yes.

Q So you are suing the City as a result of this accident?

A Yes.

Q In another court?

A Right.

Q Not in this case?

THE COURT: No, let's not keep repeating it. She said in another court.

All right.

Q Were you, as you got into the automobile at the Waldorf, were you sitting on the far left side next to the window?

A I was sitting right next to the window.

Q Was it open?

A No.

Q Do you know if any windows were open?

A They were all shut. It was cold.

Q How long had you been at the Waldorf?

A We saw the late show.

Q About what time did you get there?

2 CROSS-EXAMINATION

3 BY MR. DORFMAN:

4 Q Do you know where this accident took place?

5 A Lex and 80th.

6 Q And the other car that was involved in the ac-

7 cident with your car, did you see that car at any time

8 before the accident?

9 A No, not before the accident.

10 Q Do you recall a second or two prior to the im-

11 pact itself where you were looking? Were you looking

12 out the window?

13 A No, I wasn't. I was looking out the front.

14 MR. DORFMAN: No further questions.

15 THE COURT: Any questions?

16 MR. MATTURRO: No questions.

17 REDIRECT EXAMINATION

18 BY MR. SULLIVAN:

19 Q Were there any passengers in that car in any

20 way, shape or form under the influence of alcohol?

21 MR. CARROLL: I object, your Honor. I don't

22 know that she can answer that.

23 THE COURT: I am going to sustain the objection

24 to that. I will leave the record as it is. I don't know

25 how she could answer that question anyway.

So I have an asthmatic condition. My breaking was getting tight and the door on our side of the car, the way it was hit this way, and I was on the other side, so it was like a V and it was an opening so I tried to get out, push the door out or get some air, and then I saw it was no use, so I just, you know, sat there.

I said to my wife, "Are you OK?" She was in the back seat. She said, "Yes."

I heard Cheryll moaning and I heard Donna speak and I looked in the back and I saw everybody in the middle row of boys, they were all out and Rose was out and the driver was out.

Q Did you, prior to the contact, see any red light?

A No. Excuse me, do you mean the red light, the street light?

Q No, I mean other than street lights?

A I don't know. I can't say for sure.

Q Did you at any time hear a siren?

A No.

Q Could you hear different things --

THE COURT: Not could you. Did you?

Q Did you hear city noises as you were driving down the street?

MR.CARROLL: I object, your Honor. That's very vague.

THE COURT: I think it is pretty vague.

When you were driving along, were you paying much attention to what was going on?

THE WITNESS: I was, yes, because I was in the front seat.

THE COURT: So you were paying attention?

THE WITNESS: Right.

THE COURT: You had a window next to you. Was it open or shut?

THE WITNESS: It was open about this much.

THE COURT: Were you observing traffic?

THE WITNESS: I was, yes.

THE COURT: Were you hearing things that went on?

THE WITNESS: Well, I was in the front. You know, if you are a driver, if you are sitting in the front seat, you are observing and there was no cars in front of us. There was no cars behind us. We were just moving along.

Q Were you taking part in the small talk?

A No.

Q Did you hear, as you were driving along, city noises, any noises from the city as you were driving along?

were driving up Park Avenue to 80th Street, what was the light at 80th and Park?

THE WITNESS: It was green.

THE COURT: Then you made a righthand turn?

THE WITNESS: That's correct.

THE COURT: Then you observed the light at Lexington was red?

THE WITNESS: When we started down, yes, the light was red.

Q When did it change?

A It changed --

Q Where was your car, the car you were driving in, when the light at Lexington at 80th changed?

A It was about three-quarters down Lexington going towards -- three-quarters down 80th Street going towards Lexington.

Q As you entered Lexington, did you observe any cars parked on Lexington Avenue on the westerly side?

A Parked or double-parked?

Q Parked.

A Yes.

Q You saw them?

A Yes.

Q Which side were they on?

A There were cars on both sides.

Q When you say "both sides," you mean both sides of Lexington Avenue?

A Correct.

Q Were there cars parked on both sides of Lexington on both your left and the right?

A Correct.

Q Any double-parked cars?

A I don't remember any double-parked.

Q Can you say whether there were or not?

A I cannot.

Q Did you see the white car that hit you at all before the accident?

A No.

MR. CARROLL: No further questions, your Honor.

THE COURT: Any other questions?

MR. DORFMAN: I have no questions.

THE COURT: Any questions?

MR. MATTURRO: No questions, your Honor.

THE COURT: Any questions on redirect?

MR. SULLIVAN: No questions, your Honor.

THE COURT: Thank you, Mr. Camac. You are excused.

(Witness excused)

2 MR. SULLIVAN: I call Mrs. Paris to the stand.

3 S H I R L E Y P A R I S, called as a witness

4 by the plaintiffs, being first duly sworn, testified

5 as follows:

6 DIRECT EXAMINATION

7 BY MR. SULLIVAN:

8 Q What is your occupation?

9 A A librarian for the City of New York.

10 Q Where do you work?

11 A In the Municipal Building.

12 Q That's right next door, is it not?

13 A Yes.

14 Q You and I have never met, have we?

15 A No.

16 Q But I understand my office apparently has done

17 some legal work for you of some kind in the past, is

18 that correct?

19 A A long time ago.

20 Q Youwere subpoenaed by my office to come here

21 and bring books, were you not?

22 A Yes.

23 Q For how long have you been working as a librarian

24 for the City of New York?

25 A Five and a half years.

Q Are you a general librarian or one specific area?

A Well, I'm called a reference librarian and I generally tend to specialize in rules and regulations and some of the legal materials which we have, but I do other reference work, too.

MR. SULLIVAN: Would you mark the book, please.

xx (Plaintiff's Exhibit 5 marked for identification)

Q I show you Plaintiff's Exhibit 5 for identificaction, Mrs. Paris, and I ask you what is that book.

A This is called the Police Manual and it is issued by the Police Department and it contains their rules and regulations.

Q The rules and regulations which govern the Police Department?

A Well, this mainly covers police officers. There is another one for detectives and which contains organization and administration but generally this --

Q This is the one for police officers?

A Yes.

Q Does that book have in it the rules that were in effect on December 23, 1973?

A Well, they are different dates on them but the

2 one in question, the latest one is in 1972, but there has
3 been no update because I keep them up to date and there
4 were no revision notices for that date.
5 Q So that the rule in question, Mrs. Paris, do I
6 understand that this was the rule that was in effect in
7 1972 and had been in effect from 1972 up until that day,
8 correct?
9 A Well, to give you an honest answer, it was
10 in effect in 1972, presumably it was in effect in 1973 be-
11 cause I have seen no revision notices.
12 MR. SULLIVAN: Your Honor, I would like to
13 offer in evidence just a part of Plaintiff's 5 for iden-
14 tification which applies to the case.
15 THE COURT: Show it to counsel.
16 Mr. Carroll, you better take a look at what he
17 is offering.
18 MR. CARROLL: I am going to object, your Honor.
19 If you will give me an opportunity to look at it this
20 evening, I will probably consent to it.
21 THE COURT: Anyway, you are satisfied; it is
22 your job to keep this police manual, is it, for the library,
23 is that right?
24 THE WITNESS: Well, I generally keep charge of
25 rules and regulations.

If I could take it back, perhaps I could make a copy of the one page.

MR. SULLIVAN: Your Honor, the part I am referring to is only two pages. Mrs. Paris wants strongly to bring the book back. Could we consent to her Xeroxing the two pages?

MR. CARROLL: What pages are you talking about?

MR. SULLIVAN: I'll show you.

THE COURT: How does the material for this book come to you, ma'am?

THE WITNESS: It is part of our collection and we have several copies. I have one copy.

THE COURT: You say it is part of your collection. What do you do?

THE WITNESS: It is part of the collection of the Municipal Library and there are various agencies in the City that send in their manuals--

THE COURT: On this one, who would send the materials in?

THE WITNESS: The Police Department.

THE COURT: That's what I'm trying to get at. In other words, whatever you get comes from the Police Department?

THE WITNESS: Yes. And the revisions come from

A Well, after the show was over, we went outside and someone decided to take a limousine. I don't know exactly who decided.

We were driving along and there was some small talk. As I recall, there was one person, Freddie was talking. And it was relatively quiet in the car. I don't remember if there were any windows open or not. At least where I was sitting in the back there weren't.

THE COURT: Where were you sitting in the back?

THE WITNESS: In the back, second from the right. We were driving along and then all of a sudden it was as if a bomb hit.

I looked over and I remember my brother was sitting across from me and all of a sudden he was like thrown next to me and his face was all bloody. That was like, you know, and I remember everybody moaning and groaning and my sister screaming that she is in pain,and I remember screaming to my husband if he was all right, and I just heard him. I couldn't see him.

Q Your brother that you mentioned, that's Steve Baker, right?

A Yes.

Q Prior to whatever it is that happened, did you hear any sirens?

2 A No, I heard nothing.

3 Q Did you see any red light?

4 A No.

5 Q Were you taken to a hospital?

6 A Yes.

7 Q How long were you in the hospital?

8 A About two and a half weeks.

9 MR. SULLIVAN: I have no further questions.

10 THE COURT: All right.

11 CROSS-EXAMINATION

12 BY MR. CARROLL:

13 Q Is it Miss Camac?

14 A Mrs. Camac.

15 Q I think you said you were riding along, it felt

16 like a bomb hit and I think then you said you heard

17 nothing, you saw nothing,in response to questions about

18 the flashing red light, and a siren?

19 A Right. I heard nothing.

20 Q Did you see the car that hit you?

21 A No.

22 Q You never saw it at all?

23 A Never saw it at all.

24 THE COURT: Any other questions?

25 MR. DORFMAN: I have no questions, your Honor.

2 police manual. I don't see why not. I suppose somebody
3 in the Corporation Counsel's office would have. I would
4 have thought that was something I could have taken judicial
5 notice of.
6 MR. SULLIVAN: Perhaps it would have been a
7 better way.
8 THE COURT: I think it would have been instead
9 of wasting all this time.
10 OK. We will take a couple minutes' recess.
11 (Recess)
12 (Jury present)
13 W I L L I A M R U S S E L L, called as a
14 witness by the plaintiffs, being first duly sworn,
15 testified as follows:
16 THE WITNESS: Shield No. 16719, Highway Patrol
17 Unit.
18 DIRECT EXAMINATION
19 BY MR. SULLIVAN:
20 Q Officer, how long have you been a New York City
21 police officer?
22 A Approximately 18 years, sir.
23 Q Can you tell me, did there come a time that you
24 investigated in any way an accident that occurred December
25 23, 1973, involving a Ford Thunderbird and a black

2 limousine Cadillac on the corner of 80th and Lexington
3 Avenue?
4 A Yes, sir.
5 Q Over the 18 years I imagine you have investi-
6 gated a lot of accidents, correct?
7 A Yes, sir.
8 Q Do you remember the specifics around this inves-
9 tigation of this particular accident from your own memory?
10 A The specifics, no. I am afraid I don't.
11 Q Did you look at any reports before coming here
12 today to try and refresh your recollection?
13 A I don't have any reports.
14 Q Do you have any memo book or anything of that
15 kind?
16 A Yes.
17 Q Did you look at that to refresh your recollec-
18 tion?
19 A Yes, sir.
20 Q Do you have it with you?
21 A Yes, sir.
22 Q Can I see it, please?
23 A Certainly.
24 (Handing)
25 Q Does this sheet of paper that you have given me

MR. CARROLL: Is this No. 7?

MR. SULLIVAN: Yes.

THE COURT: All right. No. 7 will be received.

xx (Plaintiff's Exhibit No. 7 received in evidence)

Q Officer, you may look at this document now.

Would you, looking at that document, tell us everything that Steven Baker told you that you wrote down on that report?

A Yes. We have a witness' statement form, BD301-061, and we interview any witnesses to accidents or the people involved in accidents. There are standard questions and I write down exactly what the people tell me regarding -- I asked him his name and he said it was Steven Baker. And he lived at 1255 West 63rd Street, Kansas City, Missouri, and he listed his telephone number as 816-523-8876.

I asked him where he was sitting in the car and he said in the second row on the righthand side.

The interview was conducted at the hospital at 3:15 a.m. on December 23, 1973.

I asked him, "Did you see the accident?"

He said, "No, I didn't."

"Where were you at the time of the accident?"

2 "In the limo in the second row."

3 "Do you know any of the persons involved in

4 this accident?"

5 "Yes."

6 "If yes, whom?"

7 "All the people in the limousine."

8 "At what time did the accident occur?"

9 "Around 1:15 to 1:20 a.m., December 23, 1973."

10 I asked him the location. He said, "I'm not

11 sure."

12 I asked him if he knew the plate number of

13 the vehicle and he said "No."

14 Then I asked if he knew the make or type of

15 vehicle that he was in and he said it was a black limousine.

16 I asked him if he knew what the other car looked

17 like and he said "A large tan color."

18 That's all he could remember on that.

19 I asked him what direction and on what street

20 they were traveling and he said "We were going toward the

21 higher numbers. The other car was coming from our left."

22 The speed of the vehicles involved, he said

23 his car was around 30 to 35 miles per hour. The other

24 vehicle, "I have no idea."

25 "Was the vehicle on the wrong side of the street,"

meaning his.

He said, "No."

I asked him about the other car and he said, "I can't answer that."

"Did the vehicle swerve to avoid contact?"

About his car, he said "I can't remember." And about the other car, "I can't remember."

I asked him immediately prior to the accident was any signal given, a horn, a hand or anything?

He said "I don't remember" for both cars.

I asked him, "What lights on the vehicle were lighted?" And he said on his vehicle it appeared that all normal lights were on.

And I asked him about the other vehicle.

He said, "I can't tell you."

I asked him what were the points of impact?

And he said -- oh, from viewing after the accident, his left side, and the other vehicle's front end.

After the impact, how far did the vehicles go?

He said,"I don't remember" for his car and the other vehicle.

I asked in what direction was any pedestrian, if any, going.

He said "I didn't notice any."

At the time of the accident were there any other vehicles on the street in the vicinity?

He said, "Yes, within sight."

At the time of the accident was your visibility obstructed in any way?

He said, "Yes, I think I was looking backwards."

When first observed by you, how far from the point of impact was the other vehicle?

"I didn't see him before the accident."

He stated the accident occurred during darkness. The weather condition was clear. The street lights were on. The road condition was dry.

I asked him if he observed any obstructions or holes in the street.

He said "I didn't feel any."

Who was with you at the time of the accident?

He said, "Nine friends."

I asked him what he felt the cause of the accident was.

He said,"I can't say for sure."

I asked him, "Will you briefly state in your own way what you saw and heard with regard to this accident?"

And he said "I honestly think I was knocked out

Q Would you read to this jury everything that is on Police Officer Russell's statement as to -- I withdraw the question.

Would you read for us, please, everything that is on Police Officer Gallagher's statement?

MR. CARROLL: Is that Gallagher's statement?

THE COURT: That's Exhibit 8. That's been received.

MR. CARROLL: And is signed by --

MR. SULLIVAN: By this officer as interrogating officer and by Gallagher.

A First name, Francis. Last name, Gallagher. Precinct E2, which is Emergency 2. His address: Emergency Squad No. 2, 530 West 126th Street. Business Phone: 678-1371. The accident involved death and personal injury.

He is marked as a witness. The location of the interview was the precinct stationhouse. The time of report was 3:00 a.m. The month, December 23, 1973.

"Did you see the accident?"

"Yes."

"Where were you at the time of the accident?"

"75 feet to the rear vehicle No. 1."

"Do you know any of the persons involved in

this accident?"

"No."

"At what time did the accident occur?"

"At 1:40 a.m., December 23, 1973."

Location: Lexington Avenue and 80th Street.

License Plat No. Vehicle No. 1 was WNS883 NJ registration.

Vehicle No. 2 was 571SCY.

Make and type of vehicle No. 1 was T-Bird hardtop.

No. 2 was a cadillac limousine.

THE COURT: T-Bird, does that mean Thunderbird?

THE WITNESS: Yes. "T-Bird" is what is written.

Direction of travel and on what street.

Vehicle No. 1, which was the Thunderbird, southbound on Lexington Avenue.

Vehicle No. 2 was eastbound on 80th Street.

Speed of the vehicles involved.

He said "No. 1 was excessive. No. 2 was slow."

Was the vehicle on the wrong side of the street?

No. 1 he marked off "No." No. 2 he marked off "No."

Did the vehicles swerve or turn to avoid contact?

2 Vehicle No. 1, no. Vehicle No. 2, no.

3 "Immediately prior to the accident was any signal
4 given, horn, hand or mechanical?"

5 He answered "No" for both of them.

6 "What lights on the vehicle were lighted?

7 On No. 1 he said all lights. On No. 2, all
8 lights.

9 "What were the points of impact?"

10 Vehicle No. 1 head-on. Vehicle No. 2 left
11 side.

12 "After the impact, how far did the vehicles go?"

13 Vehicle No. 1 zero feet. Vehicle No. 2, 25
14 feet.

15 "In what direction was the pedestrian going, if
16 any?"

17 "None."

18 "At the time of the accident were any other
19 vehicles on the street in the vicinity?"

20 He marked off "Yes."

21 "At the time of the accident was your visibility
22 obstructed in any way?"

23 "No."

24 The accident occurred during darkness, the
25 weather was clear, the street lights were on, the road

2 condition dry.

3 Obstructions, holes in the street?

4 "No."

5 Who was with you at the time of the accident?

6 "Plice Officer Jaques."

7 What was the cause of the accident?

8 "Attempted escape with a stolen vehicle,

9 Vehicle No. 1."

10 The signature of the witness was Police Officer

11 Francis Gallagher and the signature of the interrogating

12 officer is William Russell.

13 Q Officer, I show you these other two statements

14 that came with your report and ask you, as a result of

15 your answer, Officer Kelly's investigation that night,

16 isn't it a fact that the only two other statements you

17 did get was Diane Camac, who is here and Steven Gross?

18 A That is correct.

19 Gross. his statement was dated December 31,

20 1973, by Police Officer Bondi from Highway Patrol 1.

21 The date, Diane Camac, the time and date of the

22 report is missing.

23 Q But who was the interrogating officer on that

24 one?

25 A Police Officer T. G. Kelly.

MR.CARROLL: I have no objection.

THE COURT: Thank you.

MR. MATTURRO: No objection to Officer Bondi's report.

No objection to either one. Thank you.

MR. DORFMAN: I have no objection.

THE COURT: All right.

Exhibits 10 and 11 will be recieved.

xx (Plaintiff's Exhibits 10 and 11 received in evidence)

MR. SULLIVAN: Under the section law, briefly state in your own way what you saw and heard with regard to this accident.

Reading from Plaintiff's 11, Diane Camac's statement.

"I don't remember."

Reading from the same section on Steven Gross' statement, which is Plaintiff's 10.

"I heard screech of tires. Saw police car with lights on roof, red ones. The white car hit the Cadillac in the intersection. There was a fire in the back of the Cadillac. I think the police car was chasing the white car before it happened."

Q Officer, was there a parked vehicle in any way

C H E R Y L L O H M A N, called as a witness by the Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SULLIVAN:

Q Your name today is Mrs. Nolte, correct?

A That's right.

Q And on the day of the accident your name was Cheryll Ohman, correct?

A Correct.

Q And you have been married since the accident?

A Yes.

Q The night of the accident, you were engaged to one of the two Gregorio Brothers, is that correct?

A Yes, it is.

Q You were in the limousine when it left the Waldorf-Astoria?

A Yes, I was.

THE COURT: Where were you sitting then?

THE WITNESS: I was sitting second from the left in the rear seat.

Q Can you tell me what happened which related to --- leading up to the area of 80th Street and Lexington Avenue?

A I don't remember.

Q You don't remember anything?

A No.

Q After the accident were you taken to a hospital?

A Yes, I was.

Q How long were you in the hospital?

A Nine days.

MR. SULLIVAN: No further questions.

THE COURT: Any questions?

CROSS-EXAMINATION

BY MR. CARROLL:

Q Do you recall getting into the Cadillac limousine?

A Yes, I do.

Q What do you recall about proceeding from the Waldorf to the scene of the accident at any time?

A I remember getting into the limousine outside the Waldorf-Astoria. Riding along Park Avenue. The last thing I remember is Park Avenue and 65th Street.

Q What is the very next thing that you recall?

A Lying on the sidewalk.

MR. CARROLL: I have no further questions, your Honor.

THE COURT: Any other questions?

MR. MATTURRO: No questions.

object to it being read into the record.

THE COURT: I will allow him to read it and I will note your objection.

MR. SULLIVAN: Reading from page 3 --

THE COURT: Tell us what it is before you start reading it.

MR. SULLIVAN: It is the testimony of Lee Earl Johnson.

THE COURT: You remember, ladies and gentlemen, he is named as a defendant here. He was the driver of the car that according to the testimony was being pursued down Lexington Avenue.

OK.

MR. SULLIVAN: The testimony was on March 25, 1976.

"Q We will have your full name and address.

"A Lee Earl Johnson. 1661 St. John's Place, Brooklyn.

"Q All right. Now, Mr. Johnson, on December 23, 1973, you were involved in an accident at about 1:40 a.m. on a Saturday. Is that 1:40 a.m. or p.m.?

"A I was a passenger in that car that was in an accident. I didn't have an accident.

"Q Well, were you involved in an accident on that

day?

"A I was in the car that had the accident.

"Q They had you as the driver, sir.

"A Yes, they did.

"Q So you were not the passenger, you were the driver?

"A Well, they had it wrong. I was the passenger.

"Q All right. You were involved in an accident. Was it 1:40 a.m. in the morning?

"A I don't remember. I was asleep in the car.

"Q All right. Who was driving the car that you were in?

"A A guy by the name of T.J. I met him at a party and he was giving me a ride home when the accident occurred in which I was intoxicated. I was asleep.

"Q You were intoxicated?

"A Yes.

"Q We have two police reports, Mr. Johnson, that indicate that you were the driver of the Thunderbird car.

"A Yes.

"Q What do you have to say about that, sir?

"A Well, after the accident when I was released from the hospital, in the hospital, and I did 14 months in the Correctional Department in New York City.

"Q You were arrested in the hospital, sir?

"A Yes.

"Q When your car was involved in the accident with Mr. Bliss and the police officer came over, apparently they found you at the wheel?

"A No, I wasn't at the wheel.

"Q Was Mr. Jones taken to the hospital?

"A He left the car."

MR. SULLIVAN: Your Honor, on the next four lines may we approach the bench?

THE COURT: Sure.

(At the side bar)

MR. SULLIVAN: It is plaintiffs' contention that I should be able to read page 7, line 5 to line 10, but I-- or 11 - - no, actually 12, but I don't want to do so because of your Honor's prior discussion, without your Honor's permission.

THE COURT: You only go down to 13?

MR. SULLIVAN: That's as far as I would go, your Honor.

THE COURT: Go down to here.

MR. SULLIVAN: I don't want to get in trouble.

THE COURT: What do you say about that?

MR. CARROLL: That part I object to. I don't

mind the acquittal but I don't want any hearsay evidence--
I don't want any remarks that he made.

THE COURT: Yes, the way it is left now, it looks like he has been convicted, doesn't it?

MR. SULLIVAN: It does.

MR. CARROLL: I have no objection to --

MR. SULLIVAN: Don't you want to hear about the eyewitnesses?

MR. CARROLL: I don't want to hear about that.

MR. SULLIVAN: He saw them testify at his own trial. It is not something he said on the street.

MR. CARROLL: Is the testimony there?

MR. SULLIVAN: No, it is not there.

MR. CARROLL: All right. I think it is objectionable, your Honor. If it were the testimony of those witnesses, I might have --

THE COURT: I tell you what. I will let hem read to the acquittal. "I wasn't the driver."

MR. SULLIVAN: Thank you.

(In open court)

MR. SULLIVAN: I will continue.

"Q Well,have you any way of substantiating your story, sir?

"A I was in jail 14 months. I went to trial in

Manhattan Supreme Court.

"Q And you were found guilty?

"A Acquittal. I wasn't the driver."

THE COURT: That's all you want to read?

MR. SULLIVAN: Yes, sir.

THE COURT: Gentlemen, I don't suppose you have had a chance to look at this transcript. I think I will take another five minute recess and then see if you gentlemen have anything you would like to read in the transcript and then after that, I understand we have run out of witnesses for the day; that's because you have been so good and you have been working so hard, we have run out of witnesses.

I would like to give them an opportunity to see if they want to read any more from this statement.

(Recess)

(Jury not present)

THE COURT: Does anybody want to read anything?

MR. SULLIVAN: The City does not.

MR. MATTURRO: No, sir.

MR. DORFMAN: We do not, your Honor.

THE COURT: All right, bring in the jury.

(Jury present)

THE COURT: Ladies and gentlemen, the lawyers

2 to the time she was discharged.

3 Q What was her condition upon discharge, her

4 basic condition regarding her left hip upon discharge?

5 A It was good. She had good motion in her hip

6 and she had no pain when I moved her hip about.

7 Q You say she had amnesia about the accident?

8 A Yes.

9 Q How long did this last?

10 A Referring to the -- let me refer to the chart.

11 MR. SULLIVAN: Doctor, you can refer to

12 your notes if you want, I believe.

13 THE WITNESS: There was a consultation that was

14 submitted to me but this will be fine.

15 A The neurologist noted 12/25 on the chart. It

16 says "Does not recall several minutes before and after

17 accident."

18 To the best of my knowledge that was the extent

19 of her amnesia and this is a typical finding with a cerebral

20 concussion, with a bruse to the brain.

21 Q What I am saying is how long did this amnesia

22 take place; the day after the accident, did she remember

23 the accident?

24 A According to the record she"does not recall

25 several minutes before and after accident," and that's all --

THE COURT: That's the only thing you got and that was made the day after the accident?

THE WITNESS: That is correct.

MR. DORFMAN: I have no further questions.

THE COURT: Any questions?

MR. MATTURRO: No questions.

REDIRECT EXAMINATION

BY MR. SULLIVAN:

Q Doctor, the fracture of the pelvis and the ball and socket area, could you explain to us, as youdid with the shoulder, what kind of fracture that was?

A It was a displaced fracture. In other words, the socket fragments were not where they should be. They were shifted and the ball had pushed into the socket, spreading the fragments apart.

Q So that the shoulder fracture was nondisplaced but the hip fracture was displaced, is that correct?

A That's right.

MR. SULLIVAN: Thank you.

THE COURT: Any other questions, gentlemen?

MR. CARROLL: The City of New York has no questions.

THE COURT: Thank you, Doctor. You are excused.

(Witness excused)

MR. SULLIVAN: I call Officer Gallagher to the stand.

F R A N C I S G A L L A G H E R, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

THE WITNESS: Shield No. 8235, assigned to Emergency Service Squad.

DIRECT EXAMINATION

BY MR. SULLIVAN:

Q Officer, on December 23, 1973, did you witness a contact between a black Cadillac limousine and a white Ford Thunderbird?

A Yes, sir, I did.

Q Where were you at the time?

A I was proceeding southbound on Lexington Avenue in the vicinity of 80th Street.

Q Were you driving?

A I was operating the radio motor patrol car, yes, sir.

Q Who else was in the car with you?

A Police Officer Kenneth Jaques.

Q Was he your partner?

A Yes, sir, he was.

Q The kind of car you were driving, was this a

regular police car?

A It was a station wagon, sir.

Q Was it a marked vehicle as opposed to an unmarked vehicle?

A Yes, sir, it was fully marked.

Q What kind of station wagon was it?

A It was a Plymouth.

Q Did it have a red light on top of the station wagon?

A Yes, sir.

Q And was the station wagon equipped with a siren?

A Yes, sir.

Q The area of 80th and Lexington, you were very familiar with that area, is that correct?

A Yes, sir.

Q You belonged at that time to what precinct?

A I belonged to Emergency Service Squad No. 2 at that time, sir.

Q Did that work out of a precinct?

A We cover the entire north end of Manhattan from 59th Stree to approximately 207th Street, from river to river.

Q Let me ask you this question. Where was your office where your superiors worked at the time? Where did

you go each day?

A Where I turned out? 126th Street and Old Broadway.

Q 80th and Lex, that would be what precinct?

A The 19th precinct, sir.

Q Where were you when you first saw the Thunderbird?

A I was northbound on First Avenue passing 81st Street.

Q When you saw the Thunderbird, what did you see him do?

A I saw him pass a signal light on 82nd Street and First Avenue.

Q At the time he passed -- is that the first time you saw him when he passed the light?

A Yes, sir.

Q At what speed was his car going at that time?

A I don't know, sir.

Q Was it very fast?

A No, sir.

Q What speed was your station wagon going at the time?

A Approximately 20 miles an hour.

Q When the Ford went through the light, did he go straight or did he turn?

2 A No,sir, he made a left turn and went northbound
3 on First Avenue.
4 Q When you saw him do that, did you accelerate
5 your motor vehicle?
6 A Yes, sir, I did.
7 Q To what speed did you accelerate?
8 THE COURT: You don't recall that?
9 THE WITNESS: No, sir, I don't.
10 Q What speed was the Thunderbird moving at this
11 time?
12 A I don't recall.
13 Q Was he going very fast?
14 THE COURT: He doesn't recall that.
15 Q Officer, do you remember testifying at an ex-
16 amination before trial in this case on March 8, 1976 in this
17 courthouse?
18 A In this courthouse? No, sir, I don't recall
19 that.
20 Q Where did you testify?
21 A I testified in criminal court-- I beg your
22 pardon. I was here on a hearing, yes.
23 THE COURT: He said there was a deposition be-
24 fore trial. That's what he was talking about.
25 You do recall that now?

THE WITNESS: Yes, sir.

Q At that time, Officer, you were represented by Mr. Genjamin Harmatz, the Assistant Corporation Counsel?

A Yes, sir.

Q Youwere under oath when you testified, correct?

A Yes, sir.

Q Reading from page 24, lines 9 through 13:

"Q To what speed di you accelerate?

"A Between 30 and 35, sir.

"Q What speed was the other vehicle proceeding?

"A I would judge him to be about the same, sir, 30 to 35."

Do you remember those questions and those answers?

A I remember the question. I don't recall the answer at this time.

THE COURT: Does that refresh your recollection?

THE WITNESS: Yes, sir, it is about that.

THE COURT: OK.

Q When the Thunderbird got to 83rd Street,what did he do?

A He made a left turn and went westbound on East 83rd Street.

Q At what speed was he moving on 83rd Street?

A Approximately the same speed.

Q What speed were you moving at on 83rd?

A I was about the same behind him.

Q From First Avenue, did he reach Second Avenue?

A Yes, sir, he did.

Q When he got to Second Avenue, what color was the light?

A The light was green in his favor.

Q Did he stop for any reason between First and Second?

A No, sir.

Q Was your siren on at this time?

A No, sir.

Q Did you use the siren at all in any way from the first time you saw him up until 83rd Street and Third Avenue?

A No, sir.

Q Was your red light on at this time?

A Yes, sir.

Q Did he reach Third Avenue?

A Yes, sir, he did.

Q What color was the light when he got to Third Avenue?

A The light was green.

2 Q Did he stop at all between Second and Third?

3 A No, sir.

4 Q Did he eventually reach the corner of Lexington

5 Avenue?

6 A The car came to a halt just short of Lexington

7 Avenue, approximately 50 feet or so.

8 Q On 83rd Street?

9 A On 83rd.

10 Q What happened when he came to a halt?

11 A When he came to a halt, my partner dismounted

12 from our car --

13 THE COURT: That is, Patrolman Jaques?

14 THE WITNESS: Yes, sir.

15 A -- and he went to the front right fender of

16 the Thunderbird. He indicated by gesture in calling to

17 the man behind the wheel to stop and turn off your motor.

18 Q Now, Officer, at this time when you pulled up

19 there, were there cars parked in this area on 83rd and

20 Lex?

21 A Yes, sir, there was.

22 Q On both sides?

23 A Yes, sir.

24 Q With cars parked on both sides at this time,

25 how many lanes for traffic would be available going down

83rd Street?

A Approximately 2, sir.

Q 83rd Street is a one-way street, correct?

A Yes, sir. One-way going westbound.

Q If cars are parked on both sides, is there any way that you could get three cars down Lexington Avenue at that time?

THE COURT: No. You got it confused.

You mean if cars are parked on each side, could three cars --

Q Three cars in any way have been between the parked cars?

A Three cars fit between the parked cars?

Q Yes.

A I don't see how, no, sir. I don't recall.

THE COURT: Your recollection is two lanes?

THE WITNESS: Yes, sir.

Q When you say approximately two lanes, isn't it a fact that for two cars to go down that area, that street with parked cars, it would be tight?

A Yes, it would.

Q When he stopped, were there any cars in front of him?

A Yes, sir.

Q How many?

THE COURT: If you recall.

A I don't recall the number. They were stopped for the red traffic light.

Q The traffic light at the corner of 83rd and Lex, is that correct?

A That's right.

Q Can you give us an approximate number of cars?

THE COURT: You indicated it was around 50 feet. What do you want him to do,measure how many cars are in 50 feet?

A Approximately two cars in front of him. Two cars, I mean, bumper to bumper, not alongside of each other.

Q Did he stop behind a particular car?

A I don't recall.

THE COURT: I don't understand the question. What do you mean, "behind a particular car"?

Q Wasn't there in fact, Officer, a double-parked car there?

A Yes, sir, there was.

Q And wasn't that double-parked car in front of the Ford Thunderbird when he stopped?

A No, sir.

Q It was not?

A Not that I recall, no.

Q Where was it?

A It was on the left side of the road. There was somebody in the car, I don't recall who. That's all I can recall about it.

Q So the double-parked car was on the left side and there was someone in it. What side of the street was the Thunderbird?

A Slightly to the right.

Q Slightly to the right?

A Yes.

Q Was he past this double-parked car or behind it?

A I don't recall.

Q Had you turned your siren on at this point?

A No, sir.

THE COURT: Well, at least you have left me with Officer Jaques down by the car. At least, that's what I thought. And your question is, did he sound his siren prior to Jaques' getting out of the car, is that right?

MR. SULLIVAN: Yes, your Honor.

THE COURT: All right.

Q Did the Ford Thunderbird have its lights on?

A I don't recall, sir.

Q Officer, would this refresh your recollection, reading from the same examination before trial at which, if I might say, your Honor, all counsel, all parties were represented by attorneys at the examination before trial.

Page 46, line 5:

"Q Did you observe whether the headlights of the Ford were on at the time that it was proceeding on 83rd Street?

"A I didn't look at the lights directly but I could see headlights reflecting on the road ahead of the Ford.

Q What distance did you see the headlighgts reflecting in front of the Ford?

A I don't know, sir."

Does that refresh your recollection?

A Yes, sir, very good, thank you.

Q How many men were in the Ford?

A I observed only one.

Q Was he sitting behind the wheel?

A Yes, sir.

Q Can you describe him?

A He was a black man with a mustache.

Q Did your police vehicle come a stop behind this

Thunderbird?

A Yes, sir.

Q How far behind the Thunderbird were you when you stopped?

A 10 or 15 feet, sir, at the most.

Q Were you to the right or to the left, directly behind; where were you?

A I was slightly to the right, as I recall.

Q Prior to this time, prior to this stopping on 83rd Street, had you obtained a license plate number of this car, the Thunderbird?

A I observed it was a New Jersey license plate, sir.

Q Did you observe the number?

A Yes, I believe I did.

Q Let me ask you this, Officer.

When a police officer sees a vehicle do something that he proceeds to go after that vehicle for, is there a proper police procedure as to what one should do --

THE COURT: I wish you wouldn't start all these questions by "proper police procedure."

If you want to ask the officer what he does, ask him.

Q What do you do, Officer?

A In relation to what, sir?

Q In noting the license plate.

A If I have the opportunity, I would like to jot the plate number down on a piece of paper.

Q You did note this number prior to this?

THE COURT: Where was he when he did what?

MR. SULLIVAN: When he noted the license plate.

THE COURT: Do you remember?

THE WITNESS: No, I don't.

Q But in any event, it was prior to stopping at the 83rd Street area, correct?

A Yes, sir.

Q Going back a second, Officer, with respect to how many cars were in front of this Thunderbird, when it stopped, did you ever testify that there were at least more than six cars in front of the Thunderbird?

A I could have, yes, sir, if you are going to count the parked cars.

Q Forgetting the parked cars, cars in the traffic lane, did you ever testify there were more than six cars in front of the Thunderbird?

THE WITNESS: If I can look at my notes, your Honor?

THE COURT: Sure, you can look at your notes.

A No, sir, I don't recall.

THE COURT: You have no recollection of that?

THE WITNESS: No, sir.

Q How far behind the double-parked car was the Thunderbird when it stopped, what distance?

THE COURT: Wait a minute. You are getting me confused. I thought the testimony was the double-parked car was on the left side of the street and he was on the righthand side of the street.

Am I wrong or not?

MR. SULLIVAN: Yes, your Honor. He was behind. I want to know what distance behind.

THE COURT: Behind the double-parked car?

MR. SULLIVAN: Yes. The double-parked car -- regardless where the Thunderbird was, the double-parked car was further up the street, correct.

THE COURT: Wait a minute. I don't follow that.

Q The double-parked car was on the left side, correct --

THE COURT: Do you remember whether -- do you remember, Officer, whether the Thunderbird was in front, behind, on the opposite side of the street from the double-parked car?

THE WITNESS: The Thunderbird was slightly

2 behind the double-parked car.

3 THE COURT: Slightly behind?

4 THE WITNESS: Yes, sir.

5 THE COURT: And the double-parked car was on

6 the left side?

7 THE WITNESS: Yes.

8 Q How much behind?

9 A I don't recall. A few feet.

10 Q Was this Thunderbird in the righthand lane or

11 the center?

12 A It was slightly to the right.

13 Q Was there room for you to pull up past it on

14 the right?

15 A No, sir.

16 Q When Officer Jaques ran up in front of the

17 Thunderbird, where did he stand?

18 A Approximately by the right front fender.

19 Q In front of the car?

20 A Yes, sir.

21 Q What did he do?

22 A He gestured with his hands. He raised his

23 hands and he called to the person behind the wheel to shut

24 off your motor, stop the car.

25 Q How far behind the Thunderbird were you when

the Thunderbird stopped? I mean, how long did it take you to pull up to a stop after the Thunderbird?

THE COURT: I don't understand that question.

Q You were coming after the Thunderbird, correct?

A Yes, sir.

Q The Thunderbird pulled up to a stop. Did you stop at the same time or did it take you a second or two to catch up?

A It took me a second or two to catch up.

Q Did Officer Jaques run out of the car right away?

A He stepped out of the car and walked briskly to the front of the Thunderbird.

Q What did you do?

A I observed the action taking place.

Q You didn't move, did you?

A Not at that time, no.

Q What happened when Officer Jaques raised his hands and told the man behind the wheel to shut off the engine?

A I observed the man behind the wheel look directly at Officer Jawues through the windshield, he turned his head to the right, looked through the windshield. At that point he turned the steering wheel to the right. The car accelerated and --

THE COURT: You mean the car was stopped. It started?

THE WITNESS: It started again, yes. It quickly started and Officer Jaques had to go back, fall back on the hood of a car that was parked.

Q Did the Thunderbird come into contact with Officer Jaques?

A No, sir.

Q What did you do then?

A I pulled up alongside of Officer Jaques, he reentered the car, and we proceeded to go into pursuit with the red light and siren of our car in operation.

THE COURT: I'm not clear on one thing.

While this was going on, what happened? How did the White car leave? I thought there was a car in front of it?

THE WITNESS: The light had changed, your Honor.

THE COURT: At that point the light changed, is that right?

THE WITNESS: Right. And the cars before it took off and he left also.

Q How long a period of time was the Thunderbird stopped at 83rd and Lexington Avenue before it took off?

A Just a matter of a few seconds, sir.

Q Isn't it a fact that the Thunderbird was there a minute or two?

A I don't recall.

THE COURT: Your best recollection is it was a few seconds?

THE WITNESS: It seemed like a few seconds to me.

Q Officer, your recollection of this incident that took place in December 1973, would you say it was better today or better on March 8, 1976 when you testified?

A I feel it was better before, 1976, 1975.

Q Do you rembmer this question and this answer, page 52, line 14:

"Q Did you at any time before reaching the point where you stopped on 83rd Street, communicate with any division of the Police Department to block off the street?

"A No.

"Q Did there come a time when your police vehicle moved from its stopped position on 83rd Street?

"A Yes, sir.

"Q How long were you stopped?

"A Just a minute or two."

Do you remember that question and that answer?

A Yes, sir, I do now.

Q Do you remember, again on page 53, line --

MR. CARROLL: Your Honor, as I recall the question to Policeman Gallagher, it was how long was the Thunderbird stopped.

THE COURT: That's what I thought, too. I think that's right.

Q How long was the Thunderbird stopped?

A I don't know, sir. I don't recall.

Q How long were you stopped?

A It seemed to me as though I was stopped for a few minutes, a few seconds.

THE COURT: That's a sort of a figure of speech, Officer. You couldn't tell us, you were not looking at your watch, I take it?

THE WITNESS: No, sir. I couldn't tell. I was more concerned with my partner at the time.

Q Officer, when you testified at this examination before trial, isn't it a fact that you answered certain questions specifically with just a few seconds and other questions specifically with a minute or two, isn't that a fact?

A I don't recall.

Q In any event, you have no recollection as to how

long the Ford was stopped, correct?

A No, sir.

Q Do you remember this question and this answer?

THE COURT: What page?

MR. SULLIVAN: 53, line 5.

"Q Did the White Ford remain in a stopped position?

"A No, sir.

"Q For how long was that car stopped?

"A Just a minute or two, sir."

Do you remember that question and that answer?

A Yes, I do.

Q When he got to 83rd and Lex, he turned, didn't he?

A Yes, sir.

Q At what speed, approximately?

A I don't know, sir.

Q How far behind him were you after he made the turn?

A About 20, 25 feet.

Q When he turned at 83rd and Lex, what color was the light?

A The light was green for the traffic going westbound and the light was red for the traffic on Lexington Avenue, going southbound.

Q So that both the Thunderbird and you had the

green light?

A Yes, sir.

Q When you turned and you looked down Lexington Avenue, what color were the lights?

A Lexington Avenue lights are a stagger system; with the blocks in front of me, they were turning red.

Q Did this Tunderbird begin to accelerate down Lex?

A Yes, sir, he did.

Q How fast did he start to go?

A My last recollection is, I guess I would say he was about 70, 75 miles an hour.

Q How fast were you going?

A I didn't observe my speedometer.

Q Was it slower --

THE COURT: You were trying to --

THE WITNESS: I was trying to catch him.

THE COURT: So you would have been going as fat as he was, would that be a fair statement?

THE WITNESS: Yes, sir.

Q Could it be, Officer, that you were going faster?

A No, sir.

Q Were you going slower, do you know?

THE COURT: Let's leave it.

You were in pursuit?

THE WITNESS: Yes, sir.

THE COURT: You were going whatever speed you thought necessary to catch him?

THE WITNESS: Yes, sir.

Q Did you ever stop?

A I stopped at 80th Street and Lexington Avenue, sir.

Q That was after the contact, right?

A Yes, sir.

Q Are you still in the same area of patrol?

A At this time? No, sir.

Q Where are you now?

A I am an instructor in a specialized training school.

Q When you come around 83rd Street and you look down Lexington Avenue, isn't it a fact that just at that point, Lexington Avenue starts to go downhill on a fairly decent grade?

THE COURT: Well, all these general adjectives about fairly decent grade --

Does Lexington Avenue go downhill?

THE WITNESS: It starts to slope.

Q It slopes at least to 80th Street, correct?

A Yes, sir.

Q Do I understand you, Officer, you never looked at your speedometer during the chase?

A I don't recall.

Q What happened at 80th and Lex, Officer, what did you see?

A As I was going down Lexington Avenue, the Thunderbird was pulling away from me. At the intersection of Lexington Avenue and 80th, I observed the black Cadillac that was going eastbound on 80th Street with the green traffic light in its favor.

About midway in the street the Thunderbird came in contact with it and struck it approximately in the middle on the left side of the Cadillac.

Q What happened to the Cadillac?

A The Cadillac was spun around and forced up on to the sidewalk on the southeast corner. There is a church there and the Cadillac was forced into the door of the church.

Q Did the Cadillac hit anything before it hit the church?

A Yes, sir. There was a Plymouth parked there.

Q A parked car?

A Yes, sir.

Q And it hit the Plymouth parked car and bounced off that before it hit the church, is that correct?

A It hit the parked car.

Q When you say, Officer, that the Thunderbird was pulling away from you, let me ask you this question.

At that time did you think it was possible in a this Plymouth station wagon to overtake this new Thunderbird?

A I had hopes of overtaking him, yes, sir.

Q On straight speed?

A Not on straight speed, no, sir.

Q How did you expect to overtake him if not on straight speed?

A Maybe blocked traffic. Maybe he would stop for something.

Q What would he stop for?

A I don't know, sir.

Q You didn't think he was going to stop voluntarily, did you?

A I always hope.

MR.CARROLL: I object to this line of questioning.

THE COURT: I sustain the objection to that.

Q Let me ask you this, Officer.

Other than striking something, was there anything else that you think he would have stopped for?

MR. CARROLL: I object, your Honor.

THE COURT: I sustain the objection to that.

MR. CARROLL: I move it be stricken, your Honor.

THE COURT: I have sustained the objection.

He hasn't answered it.

MR. SULLIVAN: Your Honor, may I reserve my right on an offer of proof for later?

THE COURT: Yes.

Q Was there traffic on Lexington Avenue as you were chasing the Thunderbird down Lexington?

A Yes, sir, as I recall, there was.

Q There was traffic?

A Yes.

Q Wss there room for the Thunderbird and the police car to go down Lexington Avenue unobstructed?

A Yes, sir.

Q Isn't it a fact, Officer, that there wasn't and that cars had to pull out of the way for those cars to go through?

A Possibly the cars pulled out of the way but I had a clear track going down.

Q How many cars were there on Lexington Avenue?

A I don't recall.

THE COURT: One thing I would like to ask you, Officer, if you remember.

When you turned left on Lexington going down, when you got to 80th Street, you told us of the red light, is that right?

THE WITNESS: Yes,sir.

THE COURT: When you turned left on Lexington and pursued this car, what were the lights between there and 80th Street, do you recall?

THE WITNESS: They were red, sir.

THE COURT: In other words, he went through these red lights beginning with the one on --

THE WITNESS: 82nd, 81st.

Q From your observation, Officer, was this man driving just fast or weaving in and out as a drunk driver might do?

A No, he was going fast.

Q You caught this man, didn't you?

A After the accident, yes, sir.

Q Was he drunk?

A He didn't appear to be, no, sir.

Q Did you call for a blockade at any time on

2 Lexington Avenue?

3 A No, sir.

4 THE COURT: What is a blockade?

5 THE WITNESS: I think the gentleman is referring

6 to a road block, sir.

7 THE COURT: Putting out a call to have a road

8 block put up on the street?

9 THE WITNESS: Yes, sir.

10 Q Officer, this 19th precinct, that is the station

11 house for this entire area, where is that located?

12 A That is on East 67th Street between Third and

13 Lexington Avenue.

14 Q So, in effect, the building actually -- while

15 it also reaches Third is on the corner of 67th and Lex,

16 correct?

17 A Sorry, I don't follow you, sir.

18 Q The building for this station house reaches

19 the corner of 67th and Lex--

20 THE COURT: I don't thin it does.

21 A No, sir.

22 Q How far is it away?

23 THE COURT: It is in the middle of the block.

24 Q After the accident happened, what did you do?

25 A When the cars came to a halt,my partner

dismounted from the right -- Police Officer Jaques, he dismounted from the right side of the car.

I placed a call for further assistance at the area and then I dismounted from the left side of the car.

I went to the right door of the Thunderbird, tried to open it, but the door was locked. I then went around to the operator's side, left side of the Thunderbird,and together Police Officer Jaques and myself were able to force the door open to se the person inside.

Q How long did it take you from the time you stopped up until the time you got up to the Thunderbird to open the door?

A At that time, sir, I wasn't interested in the time.

THE COURT: You don't recall?

THE WITNESS: I don't recall.

Q Do you remember this question and this answer at that same examination before trial? Page 68, line 5:

"Q Did you observe what Officer Jaques did after you came to a stop?

"A He dismounted from the car on the recorder's side and went to the operator's side of the Thunderbird."

So Officer Jaques went directly to the driver's side, right?

2 A Yes, sir.

3 Q Do you remember this question and this answer:

4 "Q How long did it take you to make this communi-

5 cation?

6 "A Just a second or two."

7 Do you remember that?

8 A That's about right, yes, sir.

9 Q When you went to the righthand door, the pas-

10 senger door of the Thunderbird, do I understand you to say

11 it was locked or it was damaged so it couldn't be opened?

12 A No, it wasn't damaged. It was locked.

13 Q Did both you and Officer Jaques have to pull

14 to get the dirver's door open?

15 A Yes, sir, we did.

16 Q It was jammed tight?

17 A It was jammed, yes.

18 Q When you opened the door, what did you find?

19 A We found the one occupant. He was sitting in

20 the driver's seat with the upper portion of his torso,

21 the upper part of his body leaning over the right side of

22 the seat like he was in an attempt to reach the door.

23 Q Which door?

24 A The right door, sir.

25 Q Could you describe him?

A Describe the operator?

Q Right.

A He was a black male with a mustache.

Q Did you have that Thunderbird under observation from the time he struck until the time he got to that car?

A Yes, sir.

Q Isn't it a fact, Officer, that the black man wasn't driving the car and that right after the contact the door was flung open and a white man jumped out and ran away?

A No, sir.

THE COURT: You say you didn't observe anything like that?

THE WITNESS: I didn't see anybody leaving that car.

Q And you had it under observation all the time, is that correct?

A That is correct.

Q And it took you a second to get there?

A Yes, sir.

Q And the door was jammed shut so it couldn't be opened, correct?

A We had to force the door.

Q And the black man inside was not drunk, correct?

A He didn't appear to be drunk, no, sir.

Q Did you learn the name of this driver?

A Yes, sir.

Q What was his name?

A Lee Johnson.

Q Officer, to go back a little, I found something that I couldn't find before.

Do you remember this question and this answer, page 92, line 17:

"Q When the Ford automobile came to a stop on 83rd Street, did you observe whether there were any other vehicles on that street?

"A Yes, sir."

Page 93, line 10:

"Q Six or more than six?

"A More than six."

Do you remember that question and answer?

A Yes, I do.

Q Are you telling us now, Officer, you were talking about parked cars when you answered that way?

A I believe so, yes, sir.

Q Was that six parked cars total on both sides of the street on Lexington Avenue?

A No, sir. I can't recall that.

Q Did Officer Jaques try to open the door of the ford when he stopped on 83rd Street?

A No, sir.

Q Did he pull out his gun at all?

A No, sir.

Q How long did it take you to get Johnson out of the car?

A At 83rd Street?

Q At 80th.

A Again, I don't know how long the time element was. We were working. We were busy. I don't recall.

Q Do you remember this question and this answer:

"Q How long was the man in the car before you removed him?

"A Just a few seconds."

Do you remember that question and answer?

A Yes, sir.

MR. SULLIVAN: That was page 120.

Q Do you remember this question and this answer on page 131 now?

THE COURT: What line?

MR. SULLIVAN: Line 8.

"Q And what was the color of traffic light facing 83rd Street at the time the Ford stopped?

"Q Did the traffic light subsequently turn to green?

"A Yes, sir.

"Q Approximately how much time elapsed from the time that the Ford stopped until the light turned from red to green?

"A I don't know exactly. A minute or two."

Do you remember that question and that answer?

A Yes, sir, I do.

Q Officer, is pursuit of vehicles part of your normal duties as a police officer for the City of New York?

THE COURT: I am not clear I understand what that question means.

MR. CARROLL: Your Honor, I am going to object to that on the ground he testified--

THE COURT: I know what it means. I am going to sustain the objection.

Q Was it one--

THE COURT: The question is, if you are asking the officer if he thinks somebody is violating the law, is it part of your duty to pursue the person who violates the law?

THE WITNESS: Yes, sir.

THE COURT: Is that part of your duty?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Officer, on the day of this accident, did the Police Department of the City of New York have any specific rules or regulations that police officers are required to follow when in pursuit of a vehicle?

A I don't recall, sir.

Q You don't know whether or not they did?

A I'm sure they did but I don't recall what they were or what you are referring to.

Q In fact, Officer, isn't it a fact you are sure they did but at the time you didn't know what they were?

A I don't know what you are referring to.

Q I am asking you, Officer, if there were any specific rules of the Police Department of the City of New York that police officers are required by the Police Department to follow when in pursuit of a vehicle; were there any specific rules?

MR. CARROLL: I object, your Honor.

THE COURT: Well, I think he can ask the officer whether at the time, this is 1973, I believe, December 1973, you were familiar with any rules of the Police Department regarding the pursuit of an automobile which you thought had violated the law; did you know of any such rules?

THE WITNESS: They have safety rules but I didn't know what they were.

Q But they did have rules and you did not know them, correct?

A That's right.

Q Did you, sir, receive any training by the City of New York in pursuit of vehicles while you were driving an automobile, a police car?

THE COURT: That's an awful long question again.

I take it your question, you are asking the officer whether while in the department, he had ever received any training on what to do when you are chasing cars, did you?

THE WITNESS: Yes, sir.

Q Does any of the training that you received take place to train you when you are driving a police car?

A Yes, sir.

Q It does?

A Yes, sir.

Q Tell me what that training was you received?

A I was assigned to the motorcycle division prior to becoming an emergency service police officer and we were trained in high speed chases. The apprehension of cars that were speeding.

2 Q I ask you this question, Officer.

3 I don't want to know about motorcycles.

4 What I want to know is were you trained to chase

5 cars while you were driving, not a motorcycle, but a police

6 car?

7 MR. CARROLL: I object, your Honor.

8 THE COURT: The officer has said he received

9 some training in the motorcycle division, is that correct?

10 THE WITNESS: Yes, sir.

11 THE COURT: The question is: Did you receive

12 any training where rather than a motorcycle, pursuit was

13 being made in a police car?

14 THE WITNESS: Yes, sir.

15 THE COURT: You received such training?

16 THE WITNESS: Yes, sir.

17 Q Where?

18 A At the motorcycle training school.

19 Q And they taught you to pursue cars--

20 THE COURT: Don't tell him what they taught him.

21 You can ask him.

22 Q Did you at any time under anyone's supervision

23 at this motorcycle training school chase a high speed

24 vehicle while you were in a police car?

25 A Yes, sir.

Q How many times?

A I don't recall.

Q Where is this located?

A Motorcycle Training School at that time was in Riis Park out in Brooklyn.

Q What year did you receive this training?

THE COURT: Approximately?

A In the area of 1963, sir.

Q How many days were you there?

A I don't recall.

Q Would it be more than three?

A Yes.

Q More than a week?

A Yes.

Q More than a month?

MR. CARROLL: I object, your Honor.

THE COURT: Yes.

Officer, can you recall how long you were there?

THE WITNESS: I don't recall if it was two or three weeks, your Honor.

Q How much time of the two or three weeks was devoted to pursuit while you were in police cars?

MR. CARROLL: Your Honor, I am going to object to this because it is irrelevant.

THE COURT: We are getting awfully technical here but if the officer can remember while he was training, how many times he did actually chase a police car while he was in training school -- in a police car chasing somebody else, do you remember?

THE WITNESS: I don't remember the exact hours, no, your Honor. The sessions were broken up. In the morning we had field drill. In the afternoon we had class lectures.

THE COURT: And you can't remember?

THE WITNESS: No, sir.

Q When you are pursuing a motor vehicle, sir, in the City of New York, let's say in the area of 80th and Lexington, as a police officer, what is your primary concern?

A The apprehension of the man driving the vehicle and the safety of the people in the area.

Q You saw the driver of this Thunderbird look right at Officer Jaques as he was waving at him to stop, correct?

A You are talking about 83rd Street now?

Q Yes, sir.

A Yes, sir.

Q That's when you got a look at this man?

THE COURT: No.

MR. DORFMAN: I have no objection, your Honor.

MR. MATTURRO: No objection.

THE COURT: All right.

xx (Defendant City's Exhibits A and B received in evidence)

MR. CARROLL: Can I show them both to the jury while I am talking, your Honor?

THE COURT: Yes, indeed. I hope it is while you are asking questions,not talking.

MR. CARROLL: Shall I ask questions, your Honor?

THE COURT: Go ahead. Ask questions.

Q Officer, how long have you been on the police force?

A Sixteen years, sir.

Q Can you tell us what your duties have been over the sixteen years generally?

A I have been assigned to precinct duty in the 90th precinct at Brooklyn.

Q What are the duties there generally?

A Foot patrol, motor patrol. I have been assigned to the motorcycle units. My duties there were to chase speeders, issue summonses. I have been assigned to--

A I instruct in cardiopulmonary resuscitation, emergency medical techniques. Special weapons and tactics. Extrication.

Q Does your instruction have anything to do with pursuit of vehicles?

A At this time, no, sir.

Q Did it ever have anything to do?

A My instruction? No.

Q Officer, going back to 83rd Street and Lexington Avenue, I believe you stated that Officer Jaques fell back onto the hood of a parked car, is that right?

A He jumped back onto the hood of a parked car, yes.

Q Tell me what period of time he was against the hood of the car.

A I don't recall, sir.

Q Can you tell me the period of time, what period of time elapsed between the time that the Thunderbird started and you pulled up and Jaques got in your car?

A Just a matter of seconds.

Q Do you recall in the examination before trial that counsel asked you about before, on page 134, the question on line 16; I'm sorry, on line 22:

"Q How much time elapsed from the time the Ford

commenced moving after it had stopped on 83rd Street and the time that you had pulled up to allow Officer Jaques to enter your vehicle again?

"A Perhaps a minute or two.

Q Would it be a minute or two or a matter of seconds?

A At this time, I don't recall. It seems to me, recalling at this time it is only a matter of seconds.

Q Would you say your recollection would be better when you gave this testimony back in March of 1976 rather than now, which is almost a year later?

A In some details, yes, sir.

Q How about that detail?

A I don't recall that exact time.

Q After the Thunderbird made the turn on to Lexington Avenue and you similarly made the turn on to Lexington Avenue, upon your making the turn, how far ahead of you was this car?

A About 25 feet, sir.

Q So in essence he only traveled 25 feet between the time that Jaques went against the hood of the car and you pulled up your car, Jaques got in and you started your car again?

A That's what it seemed like to me.

2 Q Do you know his speed when he first started?

3 A No, I don't.

4 Q I believe you stated that the Thunderbird,

5 as he was going down Lexington Avenue was going in excess

6 of 70 miles an hour, is that right?

7 A I believe that is right, yes, sir.

8 Q Do you know how fast your car was going?

9 A No, I didn't look at the speedometer, sir.

10 Q Do you recall at your examination before trial

11 on page 62, line 8, the question was asked:

12 "Q What was the highest-- what was the lowest

13 rate of speed between 83rd and 82nd Street?

14 "A From 83rd to 82nd about 40 miles an hour and

15 accelerating."

16 Would that refresh your recollection?

17 A That's close.

18 Q And from 83rd to 82nd Street how fast was

19 the Thunderbird going, was he --

20 A Again, he was going quite fast. He was pulling

21 away from me at this time.

22 Q So he was going-- are we talking about in

23 excess of 70 miles an hour?

24 A I stated then I believed he was going in excess

25 of 70 miles an hour when he collided with the Cadillac.

Q My question now is between 83rd and 82nd Street on Lexington Avenue, how fast was he going?

A I don't know. He was building up.

Q He was going faster than your car?

A He was going faster.

Q Do you know your speed, the highest speed that you attained between 82nd and 81st Street?

A I don't recall.

Q Again, on line 15 of page 62:

"Q What was the highest speed attained by the police vehicle from 82nd to 81st Street?"

And your answer was "Approximately 50, 55."

Would that be correct?

A That's possible, yes, sir.

Q Do you know what the speed of the Thunderbird was between 82nd and 81st Street?

A I don't recall at this time.

Q Again, would it be in excess of the speed of your car?

A Yes, sir.

THE COURT: Let me ask you this, Officer. Is it your recollection that the Thunderbird was pulling away from you all the way from 83rd to 80th Street where the accident happened?

THE WITNESS: Yes, sir.

THE COURT: So the jury can assume that the Thunderbird was going faster than you were, and, of course, you were busy, you weren't spending your time watching your speedometer, you were watching what was in front of you?

THE WITNESS: Yes, sir, I was.

Q When the Thunderbird reached 81st Street and Lexington Avenue, the intersection, where was the police vehicle?

A At what street was this?

Q 81st and Lex.

A I would say I was about 50 feet behind him.

Q Do you know the speed, the highest rate of speed your vehicle attained between 81st Street and 80th Street?

A I don't recall, sir.

Q Do you know the speed that the Thunderbird attained between 81st and 82nd?

A I don't recall.

Q Can you tell me when the Thunderbird was going in excess of 70 miles an hour?

A I feel just before he struck the Cadillac.

Q You are talking about approximately the intersection of 80th Street?

A 80th Street.

Q How far back were you at the time he entered the intersection of 80th Street?

A Maybe 75, 80 feet.

Q So it would be fair to say you were losing approximately 25 feet per block --

MR. CARROLL: I object.

THE COURT: I sustain the objection. I don't see it makes much difference.

Q I believe you stated before to counsel's question regarding your speed on Lexington Avenue that you never looked at your speedometer?

A I don't recall looking at it, no.

Q These answers that you gave in the examination before trial which you said were about right, what were they based upon?

A At the time I feel it was on my experience that I had used before on a motorcycle.

Q Was that experience in determining the speed of your own car --

THE COURT: That is not what he said. I don't think that is what the officer said. You are basing this on experience in motorcycles, I suppose in automobiles, too?

THE WITNESS: Yes, sir.

THE COURT: You have an idea, you get a notion after a while as to speed, is that right?

THE WITNESS: Yes, I do.

THE COURT: OK.

Q At the point of contact between the Thunderbird and the Cadillac limousine, where was your car?

A I was about 75 or 80 feet behind it in the center lane of Lexington Avenue southbound.

Q Where on the block would that be, approximately mid-block, more towards 81st Street, more towards 80th Street?

A It would be close to 81st Street.

Q So you had just crossed the intersection of 81st Street, would that be about right?

MR. CARROLL: I object, your Honor, to his --

THE COURT: Fair enough. As far as you recall, it is pretty difficult, but as far as you recall, when you saw the impact, could you say about where your car was in relation to 81st Street?

THE WITNESS: I feel I was about 8 to 10 cars behind the Thunderbird and that would put me over the 81st Street line, yes, sir, just over the 81st Street line.

THE COURT: And what is the first thing you did when you saw this impact?

THE WITNESS: We pulled up, after the cars stopped spinning --

THE COURT: What did you do with your car?

THE WITNESS: Pulled it in front of the Thunderbird.

THE COURT: You were going pretty fast?

THE WITNESS: Yes, we decelerated right away.

THE COURT: How did you do that?

THE WITNESS: By brakes and dropping the car into the lower transmission gear.

THE COURT: So you slowed down pretty fast?

THE WITNESS: Yes, sir.

Q Officer, were you an eyewitness to this accident?

A Yes, sir.

Q At the time were you familiar with the rules pertaining to the action of a private motor vehicle --

THE COURT: Wait a minute, wait a minute. I don't want to get into that.

MR.DORFMAN: May I finish the question first, your Honor --

THE COURT: No, first I want to see you at the

determined that there was a contributing factor, but there was no specific --

THE COURT: I will sustain the objection.

He said there were no contributing factors.

Let's not get into whether there were. He says none.

Q Can you tell me what No. 24 on that --

THE COURT: Why are we getting into No. 24? Please let's not get into this.

You say you put No. 25. A minute ago you thought it was 2. Now you think it is 25 and that means "no contributing factors"?

THE WITNESS: That's right.

Q Based on being an eyewitness to this occurrence, you determined there were no contributing factors on the limousine, would that be correct?

A Yes, sir.

Q Are we talking about contributing factors or contributing circumstances? We are talking about being the cause of the accident, is that right?

MR. CARROLL: I object, your Honor, on the ground the report speaks for itself.

THE COURT: Well, I think it does, but I do think it is a fair question and I will ask you, Officer, when you

REDIRECT EXAMINATION

BY MR. SULLIVAN:

Q Mr. Johnson was sober?

A He didn't appear to be intoxicated to me.

Q You saw him later on at the Metropolitan Hospital?

A Yes.

Q He was sober then, correct?

A I was not allowed to talk to him.

THE COURT: You don't know?

THE WITNESS: I don't know.

Q You went to Metropolitan Hospital, didn't you?

A Yes, sir.

Q Do you ever remember telling anybody that in fact you did look at your speedometer and that your speedometer when you last looked at it said 80; do you remember telling anybody that?

A No, I don't.

Q Did you have your siren on all the way?

A Yes, from 83rd Street south.

Q Did you ever turn it off once?

A No, sir.

Q Was it a constant blast?

A Yes, sir.

Q You called in right after the 83rd Street stop, correct?

A No, sir.

THE COURT: Wait a minute. You are wrong.

Q The incident on 83rd Street, when the Thunderbird came to a stop, your partner called in right after that, correct?

A No.

Q Who called in anybody?

A We didn't call in until we started the pursuit.

Q In other words, when you took right off after him?

A Right.

Q Who called in then?

A My partner, Officer Jaques.

Q They keep tapes of those calls, don't they?

A I believe so, yes.

Q Do you know where they are kept?

A No, sir, I don't.

Q Do you know how long they are kept?

A No, sir.

Q Isn't it a fact, Officer, that you, from your experience and your training as a police officer, that you

2 knew that in a Plymouth station wagon, from speed alone
3 there was no way you could catch that Thunderbird?
4 MR. CARROLL: Your Honor, I object. He already
5 answered that question.
6 THE COURT: Is the question, did he know at
7 the time, is that your question?
8 MR. SULLIVAN: From his experience as a police
9 officer, didn't you know from speed alone a Plymouth
10 station --
11 THE COURT: He indicated otherwise but he
12 can answer that question.
13 On speed alone, do you think you could ever
14 catch this fellow?
15 THE WITNESS: On speed alone on a straightaway,
16 no, sir.
17 Q Isn't it a fact, Officer, that one of the
18 things, according to the Police Department, the City of
19 New York, that a police officer should consider before
20 commencing a high speed chase is the chance of overtaking
21 that vehicle as a result of what kind of car you are
22 driving and what kind of car you are chasing?
23 MR. CARROLL: I object, your Honor.
24 I have no objection if he asks him if he knows.
25 THE COURT: I sustain the objection to that

question. I'll let the officer answer in his experience when you are in pursuit, in your own experience, not a question of police regulations, do you have any notion that if you figure you can't catch the car, that there is something else to do?

THE WITNESS: I feel if I'm going to jeopardize somebody after a lengthy chase, I am going to discontinue the chase.

Q Let me ask you this, Officer. Do you know who Mr. Ferder is?

A Mr. Who?

Q Ferder.

A No, sir, I don't.

Q Do you know who Miss Kranzdorf is?

A No, sir.

Q You never saw those people?

A I don't recall them.

Q Certainly not at the scene --

MR. CARROLL: I object.

THE COURT: Objection sustained.

How can he remember all those people now years after the--

MR. SULLIVAN: Let me see if I can refresh his recollection.

THE COURT: All right, you may proceed.

DIRECT EXAMINATION

BY MR. SULLIVAN:

Q On December 23, 1973, you were engaged, correct?

A Yes.

Q To whom?

A Fred Gregorio.

Q And you were with the group that went to the Waldorf-Astoria, correct?

A Yes, I was.

Q Tell me what happened after you left, what you remember that happened after you left the Waldorf.

A When we left, I remember somebody getting the limousine, I believe it was my brother-in-law, Howard Camac, and there wsa argument as to whether we should take one limousine or two, and Mr. Bliss said we could all get in one, so we all got in one limousine and I remember driving along and I don't remember --

THE COURT: Where were you sitting, do you remember?

THE WITNESS: I was in the back, second from the right.

A And I don't remember anything else until I was

sitting on the sidewalk and I believe I was in shock, and when the newspapermen from the paper took the picture of us sitting on the sidewalk, the lights brought me out of shock and I remember looking to my right and seeing my sister Dianne Camac and my brother Steve Baker and then I looked to my left and I believe somebody was working on my fiance Fred, trying to bring him back to life, and then I blacked out again.

Q Did you go to a hospital?

A Yes.

Q What hospital?

A Lenox Hill.

Q How long were you there?

A A month.

Q While you were there -- don't tell us what they told you -- but tell us what they did for you, what did they do for you, what did you see them do?

Withdrawn.

Were you in traction?

A Yes, I was.

Q How long?

A Close to a month.

Q Describe the traction to us, tell us what it was like.

THE COURT: Are you still in college?

THE WITNESS: No, I am not.

THE COURT: What are you doing now?

THE WITNESS: I am working in a furniture store. I was an interior designer. I went to school for interior design.

THE COURT: Are you working in a furniture store in Kansas City?

THE WITNESS: Yes.

MR. SULLIVAN: No other questions.

THE COURT: Any questions?

MR. CARROLL: The City of New York has no questions, your Honor.

CROSS-EXAMINATION

BY MR. DORFMAN:

Q Before the accident, did you hear any siren?

A No, I did not.

Q Did you see any red flashing lights or any flashing lights?

A No.

MR. DORFMAN: No other questions.

MR. MATTURRO: No other questions.

THE COURT: I take it you are excused.

MR. CARROLL: Your Honor, I have one question

It is important, I think. I was told that there is a possibility that your Honor's schedule dictates that we won't be here Monday.

THE COURT: Monday is my motion day. I don't sit on jury trials on Monday.

MR. SULLIVAN: The reason I wanted to know is when to schedule Officer Jaques and I will do it Tuesday instead of Monday.

THE COURT: Is there any reason to keep Mr. Schiller in the case? I haven't seen any evidence so far.

MR. SULLIVAN: I will agree to a discontinuance.

THE COURT: Do you see now, Mr. Carroll, any reason to keep Mr. Schiller in the case?

MR. CARROLL: No, sir.

MR. DORFMAN: I have no objection.

THE COURT: I would say to the reporter that the case against Mr. Schiller is dismissed. Agreeable? And I will explain that to the jury after they come back on the basis that the car was stolen and he was the owner and did not have anything to do with ut.

MR. SULLIVAN: Dismissed without costs?

THE COURT: Yes.

MR. CARROLL: Your Honor, may I inquire if the

AFTERNOON SESSION

1:45 p.m.

(In open court, jury present)

THE COURT: Good afternoon, ladies and gentlemen.

You may proceed, Mr. Sullivan.

D A V I D F A L L E K, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SULLIVAN:

Q Mr. Fallek, were you, sir, a police officer?

A Yes, sir, I was.

Q Were you a patrol officer?

A I was a policeman in the Police Department.

Q Did there come a time when you became a sergeant?

A Yes, there was.

Q Did there come a time when you became a lieutenant?

A Yes, there was.

MR. CARROLL: Your Honor, I am going to object to any testimony on the ground I don't believe -- I looked quickly through here to see if he was listed in the pretrial order.

THE COURT: I don't know what he has to say, but I think on that, go ahead.

You are no longer in the Police Department, sir?

THE WITNESS: No, I'm retired, your Honor.

THE COURT: When did you retire?

THE WITNESS: February 2, 1972.

Q Did there --

MR. CARROLL: Did you rule on my objection, your Honor?

THE COURT: Yes, I overruled it.

Q Did there come a time when you became a captain?

A Yes.

Q After you became a captain, then what did you become?

A Deputy Inspector.

Q Did you retire as a deputy inspector or did you go further?

A No, I retired as a full inspector.

Q When you were a full inspector, sir, is that a supervisory job?

THE COURT: Wait a minute. I take it you are asking Mr. Fallek to testify here as an expert witness, are you?

of the 19th precinct?

A That is correct. In fact, my office was in the 19th precinct.

THE COURT: Where is that?

THE WITNESS: On East 67th Street between Third and Lexington.

Q Mr. Fallek, I would like you to assume --

THE COURT: Before we get to the assumption business, I would like tolearn a little more about Mr. Fallek.

Under your command, I suppose at various points situations arose where the police would have to chase somebody along the streets of New York, is that right?

THE WITNESS: That is correct.

THE COURT: When you were there -- incidentally, were you there- - you retired in 1972, so you were not there in 1973, is that right?

THE WITNESS: No, I was not.

THE COURT: When you were there, were there any procedures that were used in connection with that kind of an operation?

THE WITNESS: Well, there were rules and there were policies that were laid down in the proper --

THE COURT: Tell us a little about that. Tell

us about what the rules and the policies were.

THE WITNESS: Well, the policies so far as pursuit is concerned, your Honor --

THE COURT: That's right. The jury and I have been hearing a lot of evidence about a chase down Lexington Avenue by a police car.

THE WITNESS: The policy would be that you would take into consideration the facts and the circumstances of a particular incident, depending upon the ability of the police vehicle to overtake the pursued vehicle, depending upon the traffic conditions, depending upon circumstances that may endanger the police officer or innocent bystanders that might be killed or injured.

It is like having your gun out on a man in a school yard and a bunch of children. Well, they are not going to fire.

I use this as an analogy in reference to a chase. I hope I am explicit enough.

THE COURT: I take it that what you are saying the policy is, in the event of a chase, to exercise a reasonable standard of care under the circumstances for the policeman or for the public?

THE WITNESS: That is correct.

THE COURT: Would that be a fair statement?

THE WITNESS: I would say that is a fair statement.

THE COURT: Would you like to add anything to that?

THE WITNESS: Well, also the violation or the act that was committed by the operator of the vehicle that you are pursuing.

THE COURT: In other words, the standard might vary depending upon the circumstances of the particular case or the crime that the officer thought was being committed?

THE WITNESS: Right.

If a man ran a red light you are not going to go, to use a hell-bent for leather right down.

If it was a dangerous explosive situation where you would have to go through, that would be something else, but you would have to use due care in operating the police vehicle, too, to make sure that you don't go into an accident.

This was one of our prime concerns in the Police Department.

MR. CARROLL: Your Honor, may I have a voir dire on his expertise?

THE COURT: Sure you can.

action for any --

THE COURT: What do you mean by "police action"?

THE WITNESS: Stop the vehicle.

THE COURT: How do you stop him? He is going by.

THE WITNESS: You pull up alongside of him and you block him off and you wave him off to the side.

THE COURT: You do pursue -- if a cop sees somebody going against the light, what does he do?

THE WITNESS: If he is able to apprehend him--

THE COURT: He follows him?

THE WITNESS: Right.

Q And he has a duty to pursue him?

A Depending upon the facts and circumstances.

Q Is he under an obligation to pursue a traffic violator?

MR. SULLIVAN: Your Honor, I object. This is not voir dire.

MR. CARROLL: That's the end, your Honor. Yes or no. Then you have to rule.

THE COURT: I think that's a satisfactory question to answer.

If you were sitting in a patrol car and you saw a fellow going across a red light, what do you do?

THE WITNESS: Normally we take off after him under normal conditions.

MR. CARROLL: Your Honor, that's not --

THE COURT: Oh, please.

MR. CARROLL: I realize it is your discretion to decide --

THE COURT: Go ahead with the direct examination.

BY MR. SULLIVAN:

Q Assume that at 1:30 in the morning, two police officers in a patrol car on First Avenue see a -- and assume that the patrol car that they are in is a Plymouth station wagon, and they see the new Thunderbird go through a red light, and when he goes through the red light, he is not speeding. He makes -- that red light was at 82nd and First Avenue, and he makes a left turn and he goes down First Avenue and that the police officers turn on the red light in their vehicle and pursue the vehicle.

And assume thatthe chase goes from 82nd and First to 83rd where the Thunderbird has a green light. He makes a left turn and starts down 83rd Street and he goes past First Avenue and he -- I mean he goes past Second Avenue and he goes past Third Avenue and each time, once again, going through green lights, and that the police car

is following in chasing with the red light on and then in between Third and Lexington on 83rd Street, about 50 to 75 feet from the corner the Thunderbird comes to a stop;

That the street light on the corner of Lex is red and that there are cars stopped for the --

THE COURT: Not the street light. The traffic light, please.

Q -- the traffic light is red and there are cars stopped for that red light.

And assume that the Thunderbird pulls up directly behind a double-parked car about assume 10 feet behind the double-parked car, and that the double-parked car is in the left lane for traffic and assume that there are parked cars on both sides of the street.

Assume that there is room in the right lane for the police vehicle to pull up either next to the Thunderbird or next to the double-parked car.

Also assume that prior to reaching this spot of the double-parked car, the police officers had noted the license number of the Thunderbird.

When the police car pulls up to the scene where the Thunderbird is stopped, is there a proper -- do you have an opinion with a reasonable degree of certainty in

your field as to what the proper police procedure would be for those officers?

MR. CARROLL: Your Honor, at this point I am going to only object to the assumption that the police car was using a red light. I don't know that there is any such testimony or that there ever will be.

THE COURT: This is hypothetical anyway.

Q Assume it was not.

THE COURT: Now you have him all confused.

Q Forget the red light. Forget whether the red light is on or off. Assume the rest of the facts that I gave you.

Is there a proper police procedure? Do you have an opinion as to whether or not there is a proper police procedure as to what they should do?

A Yes, I have an opinion.

Q What should they do?

A Well, No. 1, they should try to block -- may I ask one question of you? Is the double-parked car behind -- in front of the T. Bird, is that occupied or not occupied?

Q Assume that it is not.

A If it is not, then they should block the T.Bird in so that assuming what you are saying that they parked

2 10 feet behind this T. Bird and this would give the T.Bird
3 an opportunity to come between the police car and around
4 the stopped, unoccupied vehicle and escape --
5 THE COURT: What you are saying, I take it,
6 I take it under the circumstances the proper police pro-
7 cedure is to block off the offending car so he can't
8 move?
9 THE WITNESS: That's right.
10 THE COURT: That's what youare really saying.
11 Q Assume that the police officers, when they
12 pull up to the scene, that the police officers stop their
13 car instead behind the Thunderbird and that one of the
14 officers, not the driver,but the passenger officer, gets
15 out of his car, runs up in front of the Thunderbird,
16 stands approximately a half a foot in front of the
17 Thunderbird and waves at the man, yelling at him to shut
18 off his engine-
19 THE COURT: Don't be so dramatic.
20 A I think the procedure was improper because
21 he placed himself in a very vulnerable position. If
22 anything, he shouldhave gone around to the side of the
23 operator to possibly reach in and take the keys or stand
24 next to him and say, "Shut off the engine" or "Give me
25 your keys" and while being blocked off by his radio car.

Q Assume that the officers don't block the car off, as you said, and that instead they leave the avenue of escape and the Thunderbird takes off --

THE COURT: Please don't get into all these dramatic words. Just assume they stopped behind the car and the Thunderbird takes off after this happened, starts off again.

Go ahead.

Q Assume that the Thunderbird then turns the corner of 83rd and Lex at approximately 50 miles an hour and accelerates -

MR. CARROLL: Your Honor, I object to that.

THE COURT: This is perfectly ridiculous. I agree. I think what he is trying to ask you is:

Assuming that the Thunderbird takes off and there is a green light and turns left on Lexington Avenue. He is following another car in front of him. The light turns to green. He turns left on Lexington Avenue and the police car follows him and they go down Lexington Avenue.

I think that's where you wanted to ask the question. The facts were he goes down Lexington Avenue and the fellow passes a couple red lights and the speed is accelerating all the time and the police are chasing

him and they have a collision at 80th Street going through two red lights.

What is your question?

Q Do you have an opinion with a reasonable degree of certainty in your field as to what the proper procedure for those officers to have done was?

A Well, I would slowly have followed this car. After he made this turn at 50 miles an hour, I am assuming--

MR. CARROLL: Wait a minute. I think we objected to that, your Honor.

THE COURT: Not 50. He is in a hurry to - - no testimony about a range --

THE WITNESS: He is going--

THE COURT: Assuming he was trying to get away.

THE WITNESS: Right. And knowing that prior to reaching this point on 83rd near Lexington Avenue he failed to stop for this current light, this fellow is just going to go barreling down, so if he is taking off at a high speed, I would-- and going through the first light, which would be I guess 81st Street, right?

THE COURT: 82nd. He is on 83rd. He is turning left. The light is green at 83rd, he turns left following the traffic.

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THE WITNESS: At 82nd there is a red light against him. He goes barreling right through.

THE COURT: He does the same thing on 81st Street, too.

THE WITNESS: I would turn my lights off and just try to get a hold of him and, of course, radio ahead to Communications Bureau so that they will be alerted that this car is speeding down Lexington Avenue and if possible he may stop for a red light or get caught in traffic and apprehend him there, but if you turn on this light or you turn on the siren, under these facts and circumstances, that's like waving a red flag in front of a bull. He is going to accelerate further.

MR. CARROLL: Your Honor, I am going to have to object on this point unless it is connected up later. The expert witness based his answer primarily on the fact that they had ignored a red turret light prior to stopping at 83rd --

THE COURT: Please, you will have a chance to cross-examine this witness. Why all this full and feathers? He answered the questions.

I understand if you were doing it under those circumstances and in your experience you think it would be police practice at that time to turn off the red light, is

that right?

THE WITNESS: That's right. But I would follow discreetly.

THE COURT: You would follow discreetly?

THE WITNESS: Right. Because to me you are only, as I say, waving a red flag in front of a bull-- if he didn't stop before, he is not going to stop now; he has a clear road, especially if he goes through 81st Street, the red light there I assume,he is going to keep going until he hits something. That's what I would assume anyway.

THE COURT: Your opinion would be, under those circumstances, to turn off, to send word ahead, and turn off the lights, and the siren?

THE WITNESS: I wouldn't use the siren.

MR. SULLIVAN: No further questions.

THE COURT: Incidentally, you know, there is something I ought to mention-- during the luncheon recess -- and I don't know why I forgot it -- you remember Mr. Schiller was a defendant in this case. He was the owner of the white Thunderbird, do you remember, and it was his testimony that it was stolen, and do you remember the testimony this morning on the identification, that it was not Mr. Schiller whom the officer saw in the car, so

Q And you were not in the heat of the decision-making, were you?

A No.

Q Is this a fair statement of the principles governing the New York City Police Department at the time you retired?

The police have a duty to undertake the pursuit of a traffic violator. If the officers conduct the pursuit using their best judgment as to the most effective means of dealing with the violator, no liability will attach to their acts even though hindsight might disclose alternate methods that may have been safer for the public bystander.

Is that a correct statement of principles?

THE COURT: Are you familiar with that?

THE WITNESS: I am not familiar with that particular phraseology. I am familiar with the fact that the police have a duty to safeguard life and property and life comes first.

You are talking about a violation there.

Q A traffic violation.

A Yes. Again I say life and property. You asked me if there is an alternative and I don't want to get argumentative about it and the point is the primary function

is to protect life and property and life comes first. Life to me means serious injuries that are concerned or the life itself. I am talking about life and death, and then comes property. You are talking now about a violation. If you pass a traffic light, it is not a crime, it is a violation. Which comes first, the enforcement of a violation or the enforcement of your duty to protect life, and I would say life comes first.

THE COURT: Let me ask you another question at this point and this is purely hypothetical, too.

If the officer thinks, maybe rightly or wrongly, if the officer thinks when he goes up to the car on 83rd Street, when he is waiting for the traffic light, he thinks the driver of this white Thunderbird is trying to run him down, does that make any difference?

THE WITNESS: I don't know how he can assume he wants to run him down.

THE COURT: There was some testimony he turned the wheels to the right when the officer was standing and that the officer had to pull back and fell on the hood of the car that was parked on the side of the street.

THE WITNESS: Well, I would say under the facts and the circumstances, as you just posed them, your Honor, that the primary concern would be the safety of the public

that may be endangered by --

THE COURT: What I am asking you is that your answer as to what you would do regarding pursuit would not be changed by reason of that fact?

THE WITNESS: No. My primary concern would be the public.

THE COURT: All right.

Q I want you to focus on this question.

MR. SULLIVAN: Your Honor, may I just voice this objection? He is reading from something not in evidence.

THE COURT: Don't worry about that. He is just using that to ask a question.

Q Do t-e police--

THE COURT: Wait a minute. What are you reading him now?

MR. CARROLL: I am asking him a question.

THE COURT: Ask him a question.

Q Do the police have a duty to undertake pursuit of a traffic violator, that's the question, generally?

A Generally speaking, yes.

Q Specifically, is it a rule that a police officer has a duty to undertake pursuit of a traffic violator, yes or no?

A I couldn't answer the question with a yes or no.

THE COURT: Of the Thunderbird?

Q Of the Thunderbird, and ordered him to stop, and then he went around the officer and continued to escape.

At that point -- let me see now. At that point, was the police officer who stepped out and the police officer who turned the car around, were they in violation of good police principles?

MR. SULLIVAN: Objection, your Honor.

THE COURT: I don't understand the question so I will sustain the objection.

MR. CARROLL: No further questions.

MR. DORFMAN: I have no questions

REDIRECT EXAMINATION

BY MR. SULLIVAN:

Q Touching a little bit on that last question --

THE COURT: Don't touch on the last question which I didn't understand. I didn't allow that.

Q If the car that's being pursued is, in other words -- is going down one way the wrong way at a fast speed, would he then not be endangering the public's life?

A Of course.

RECROSS-EXAMINATION

BY MR. CARROLL:

Q Would he be in violation of good police principles?

A I would give you the same answer I did on the others because in this case it being going south on a northbound avenue, I think the police should really, respectfully, have held their distance back. You better believe it.

Q Would he be --

A It would be a worse situation.

Q All right, Inspector, would that -- did that police officer, under those circumstances, have a duty to turn around and follow that traffic violator?

MR. SULLIVAN: Objection, your Honor. It is assuming something not in evidence.

MR. CARROLL: You just asked the question.

THE COURT: Both of you have been assuming a lot of things not in evidence as far as I am concerned, but still you can answer that question.

A I would say they would --

Q The question was, did they have a duty to follow him?

A They would have a duty to follow him discreetly without alarming this particular motorist into doing anything foolishly, let's say accelerating this T. Bird or

whatever car they were using and/or he was using, whatever, I don't know, and it certainly would be against traffic, it would be a worse situation.

Q Remember my question is, did the --

THE COURT: Wait a minute. Wait a minute. I think what you are saying is, of course the police officer had a duty to pursue but you say he ought to do it pretty darn carefully having in mind life and limb.

THE WITNESS: Correct.

THE COURT: All right.

I don't know why we keep arguing this. You said on both sides. That is your point?

THE WITNESS: That is correct.

MR. CARROLL: No further questions.

THE COURT: All right. You are excused.

(Witness excused)

MR. SULLIVAN: Your Honor, at this time I have shown the corporation counsel my Plaintiff's Exhibit 15 for identification and I would reoffer Paragraph 1.

MR. CARROLL: Your Honor, I have no objection at all so long as we understand what it is an answer to and I think we both can agree that there was a demand for --

THE COURT: I don't know what it is. I haven't the foggiest idea what you are talking about. Excuse me.

MR. SULLIVAN: I would like to move, at this time, your Honor, to discontinue the case of Steven Baker without costs and disbursements.

THE COURT: I take it nobody is objecting to that too strongly, are they?

MR.DORFMAN: No, your Honor.

MR. CARROLL: With prejudice.

MR. SULLIVAN: With prejudice.

THE COURT: All right, that application will be granted. I take it without costs?

MR. SULLIVAN: Without costs.

THE COURT: All right. No costs.

Is that all you got now?

MR. SULLIVAN: One small thing, your Honor. I didn't want to do this without asking your Honor's permission. The notice of claim in this case was served on March 11, 1974, and it has an amount in it of approximately $10 million. I know the amount is inflammatory and I didn't want to mention it before the jury. My contention would be this--

THE COURT: Why do you have to mention anything about the notice of claim?

MR. SULLIVAN: For this reason, your Honor. The tapes to this incident were destroyed --

1 K E N N E T H J A Q U E S, called as a witness
2 by the plaintiffs, being first duly sworn,
3 testified as follows:
4 (Plaintiff's Exhibit 17 marked for identi-
5 xx fication)
6 DIRECT EXAMINATION
7 BY MR. SULLIVAN:
8 Q Officer Jaques, on December 23, 1973, you were
9 Officer Gallagher's partner, is that correct?
10 A Yes.
11 Q And you were involved in a chase which resulted
12 in a collision between a white Thunderbird and a black
13 Cadillac limousine, correct?
14 A Yes.
15 Q Officer, from the time you first started to chase
16 that car, I believe it's at 82nd and First Avenue?
17 A Yes.
18 Q The red light on the top of the car, it was on,
19 was it not?
20 A Yes.
21 Q And when you stopped the car on 83rd Street,
22 can you tell me where the --
23 THE COURT: Wait. I am not clear.
24 When he stopped the car on 83rd Street?
25

MR. SULLIVAN: Between Third Avenue and Lex.

A Yes.

Q You did stop the car, did you not?

A Yes.

THE COURT: Did you stop it, or who was driving the car?

THE WITNESS: My partner was driving the car. I stepped out of the emergency car and stopped it.

THE COURT: All right, I think that is what he is talking about.

Q Where did the Thunderbird come to a stop, in what lane?

A In the left lane.

Q And was it behind any kind of vehicle?

A Yes, there was vehicles in front of it and waiting for the signal light to change.

Q And was there room in the right lane for the police car to pass the Thunderbird?

A Not quite because there was cars parked waiting for the signal light. We were sort of beside him near his left -- his right door.

Q Officer, do you remember testifying under oath in this occasion?

A Yes.

Q You were represented by counsel at the time?

A Yes.

Q It was back on December 23, 1975?

A Yes.

Q Do you remember these questions?

MR. CARROLL: What page, please?

MR. SULLIVAN: Page 24, line 16:

"Q Was there room enough to pass the white car if you chose to do so?"

Your answer was sort of a question:

"A If we chose to do so. was there room to pass it?

"Q Yes.

And your answer was:

"A Yes."

Do you remember those questions and answers?

A Not right now, no. I don't remember that question. On how the question is put, can we pass it, could we have went by the car?

Q The question was, "Was there room enough to pass the white car if you chose to do so?" And your answer was, "Yes."

Let me ask you this, Officer.

On February 17, 1976, you signed this deposition, did you not?

A Yes, yes.

Q And before signing it, you read it to check over that everything was true, correct?

A Yes, yes.

Q You didn't change that answer, did you?

A No.

Q This Thunderbird, when it stopped, he stopped behind a double-parked vehicle, correct?

A Yes.

Q And he was directly behind that double-parked vehicle, correct?

A Yes.

Q When he then resumed moving, and he went around the corner--

THE COURT: Wait a minute. Start that question again. When he what?

Q When he started to go again, the Thunderbird--

A Yes.

Q -- he went around the corner of 82nd and Lex, correct?

A Made a left turn, went south on Lexington Avenue.

Q At what speed did he do that?

A At what speed?

Q Yes, sir.

A I'd say very fast.

Q Well, in this examination before trial, you testified 50 miles an hour he went around that corner.

A Could have been 50 miles an hour.

Q Do you remember testifying 50 miles an hour?

A If it's there, I said it, yes.

THE COURT: Was that when he was going around the corner?

THE WITNESS: Yes, as he took off and went around the corner, at least at a speed of 50, 55, I have no way of judging how fast. This is approximately.

Q Very well.

Now, Officer, you and Officer Gallagher then chased the man, correct?

A Yes.

MR. CARROLL: I object, your Honor, to all this leading.

THE COURT: Well, I think on that that it is all right. I'll allow that because I think we have had testimony about that before here.

Q When you chased him, was the siren on?

A Yes.

Q Was the red light flashing?

A Yes.

Q Were the speeds high?

A Yes.

Q Officer, if you had not caught this man, what was the-- was there any immediate danger to the community?

MR. CARROLL: I object, your Honor.

THE COURT: I sustain the objection to that question.

Q Isn't it a fact, Officer, that the departmental policy of the Police Department dictated that you abandon that chase?

MR. CARROLL: I object, your Honor.

THE COURT: I sustain the objection to that, too.

If you want to ask the officer, you can ask him what the policy is and the practice is on this kind of chase. You can do that.

Q What is the policy and practice of the Police Department on this kind of chase, Officer?

A What do you mean, on this kind of chase?

THE COURT: I think what counsel is asking you, in chasing that car down the street, when you are trying to apprehend somebody you think has violated the law, I take it also that the policy--because you have the public of the City of New York involved--and how do you do it? I think that is what he wants to know.

THE WITNESS: Well, the first reason we were after the car was for a signal light. Then when I stopped the car the second reason for chasing him, he tried to run me down. That was attempted murder on me. So we continued to chase him. And that's why we chased the car. We didn't know it had been stolen at the time either.

Q You didn't know that?

A Not at the time, no.

Q This man whoattempted to run you down, did you see him?

A Yes.

Q What color was he?

A Black.

Q Was there anybody else in that car?

A No.

Q Let me ask you this, Officer. When you arrived at the scene right after the crash, yes or no, did you yell out "Stop that man"?

A I couldn't answer that honestly. Maybe I did. Maybe I didn't. Nobody got out of the car, I know that.

Q That's not my question.

A You usually yell.

Q Did you say, "Stop that car"?

A As far as I know, no.

Q Do you remember testifying at the criminal trial?

A Yes.

Q Do you remember this question and this answer on page 97:

"Q What did you do once you reached Lexington and 80th?

"A I jumped out of the car. My partner was calling for an ambulance and more police to come over, and I raced toward the car and I yelled 'Stop that man.'

That was you testifying at the criminal trial, correct?

MR. CARROLL: I object, your Honor, to him testifying himself.

THE COURT: That question is: Did you make that statement?

THE WITNESS: Yes, I made that statement, sure.

THE COURT: All right.

Q I show you Plaintiff's Exhibit 17 for identification, sir, and I ask you if you know, as a policeman, what that is.

A Yes, it is an operations order from the Police Department.

Q And I turn --

A High speed auto pursuit.

Q That is correct, and I turn to the opposite side and I ask you, sir, who printed and published that order on High Speed Pursuit?

A The Police Commissioner.

Q The Police Commissioner of the City of New York.

THE COURT: Is there a date on this thing?

MR. SULLIVAN: Yes, your Honor.

THE COURT: What is the date?

MR. SULLIVAN: October 25, 1974.

THE COURT: 1974?

MR. SULLIVAN: Yes, your Honor.

MR. CARROLL: I object, your Honor.

THE COURT: I am going to sustain the objection. That wasn't even out, I take it, at the time of this accident.

MR. SULLIVAN: Your Honor, when it is read --

THE COURT: No, no, no. I sustain the objection to it.

MR. CARROLL: I haven't even seen it, your Honor, but I object on the ground --

THE COURT: Anyway, on the date it seems to be subsequent to this accident.

Q Isn't it a fact, sir, that the Commissioner's orders have always been in this state --

THE COURT: No, wait. Don't get into the state.

Q In this city --

THE COURT: He is in New York.

Q I apologize.

--In this city, that an officer should terminate a high speed automobile pursuit?

MR. CARROLL: Your Honor, there was an objection when I tried to read something.

MR. SULLIVAN: And you read it.

THE COURT: Wait a minute.

MR. CARROLL: I further object to the reading.

THE COURT: I am going to sustain the objection but I will ask the officer again:

How long have you been on the force, Officer?

THE WITNESS: Sixteen years.

THE COURT: Sixteen years, and you have been on radio patrol a good deal?

THE WITNESS: For sixteen years.

THE COURT: For sixteen years?

THE WITNESS: Yes.

THE COURT: Well, I will ask you again -- I did ask this about five minutes ago. I would like you to tell me what is the practice or the instructions from your superiors in these chases?

You have got the problem of pursuing somebody you think has violated the law, but you also have the problem of the public and people, innocent people, on the street; how do you handle that?

That is what I would like to find out. I guess that is all he is asking you.

THE WITNESS: It is just common sense, if anybody is in danger, we would give it up. If somebody is shooting at you, you shoot back. If they are not shooting at you, you are supposed to let it go.

THE COURT: We are not worried about shooting. I am just talking about hot pursuit.

THE WITNESS: That is hot pursuit.

THE COURT: That is the hot pursuit.

Q Was anybody shooting at you?

A No, sir.

Q Was anybody in danger? If this man left, if this man got away, was there any danger to anybody?

A No.

Q None?

A No.

Q In fact, you caught Lee Johnson --

THE COURT: Wait a minute. He has answered yes, and don't you repeat --

MR. SULLIVAN: I am on to something else.

Q You caught Lee Johnson, did you not?

A Yes.

Q And he was acquitted, was he not?

A Yes.

MR. SULLIVAN: May I have this marked for identification.

xx (Plaintiff's Exhibit 18 marked for identification)

Q You are familiar with this, are you not, Officer, Plaintiff's 18 for identification?

A Yes.

Q And what is the date on that one?

A 1971-1972.

Q OK.

Now, Officer, are you familiar, Officer, with the four factors--

THE COURT: What is this thing?

If this is something you are going to offer --

MR. SULLIVAN: I offer it in evidence.

THE COURT: Show it to Mr. Carroll.

MR. CARROLL: I have never seen it before in my life.

THE COURT: Look at it.

MR. CARROLL: He could have shown it to me.

THE COURT: Stop it, please.

Look at it, will you please, Mr. Carroll, instead of all this talk? Just look at it, please.

MR. CARROLL: I have no objection.

THE COURT: It will be received.

MR.DORFMAN: I have no objection.

THE COURT: Are you offering the whole thing or just part of it?

MR. SULLIVAN: Just page 14, your Honor.

THE COURT: All right, page 14 will be received.

xx (Plaintiff's Exhibit 18, page 14, received in evidence)

BY MR. SULLIVAN:

Q Officer Jaques, could you read just Section F from A to D to the jury?

A "Safety considerations at high speed pursuit. No. 1. Use good judgment in initiating a motor vehicle pursuit, weigh the following factors: The crime, offense or violation committed or suspected; density of vehicular and pedestrian traffic; safety of other motorists, pedestrians and members of the force involved; probability of overtaking the pursued vehicle without unnecessary risk."

Q All right now, sir, as a police officer, can you tell me what was the probability of overtaking this new Thunderbird with a Plymouth station wagon?

THE COURT: Did you expect that night you were going to be able to overtake this car?

THE WITNESS: At first, yes. The chase maybe lasted a minute, or three-quarters. If it had went on longer than that, we probably would havegave up, but it took only maybe a minute to come from 83rd to 80th Street when the accident happened. It couldn't have been stopped or anything else.

Q You had the red light on this man from 82nd and First?

A Yes, yes, the red light was on.

Q All right.

MR. SULLIVAN: I have no further questions. Thank you, sir.

THE COURT: All right, Mr. Carroll.

CROSS-EXAMINATION

BY MR. CARROLL:

Q Officer, I show you City's Exhibit A in evidence, and ask you if you recognize that photo.

A Yes, that is Lexington Avenue going southbound.

Q Is that a fair and accurate representation of

the area at the time of the accident?

A Yes.

Q I show you City's Exhibit D in evidence, and ask you if that is a fair and accurate representation of the same intersection from a different angle?

A Yes, this is going eastbound on 80th Street.

Q Was Lee Johnson indicted?

A Yes.

Q Was he indicted by a grand jury?

A Yes.

Q And he went to trial?

A Yes.

Q You testified?

A Yes.

Q Officer Gallagher testified?

A Do you remember what he was charged with?

A He had three or four counts. My partner was the arresting officer. It was attempted murder, vehicular homicide, motor vehicle violations, and a stolen vehicle, Also, he had burglar tools -- it was a snapper to knock out locks on automobiles.

Q Did you see that snapper?

A Yes.

Q Where was it when you saw it first?

A In the front seat of the car.

Q Of the Thunderbird?

A Yes.

Q Where was the Thunderbird at that time?

A At 80th Street and Lexington Avenue.

Q What was the occasion of your seeing it?

A That's after the accident happened and he was placed under arrest there and we proceeded to take the aided out of the Cadillac.

Q When you turned to go south on Lexington at 83rd, do you recall how fast you were going?

A I was going fast. I don't know. I didn't look at the speedometer. I was not driving. My partner was driving.

Q After you made the turn and started down Lexington Avenue from 83rd Street, could you see downtown 80th Street?

A Could I see clearly from there to 80th Street? No, there was other vehicles in the roadway.

Q In front of you?

A Yes.

Q Do you recall when the siren was put on?

A As soon as the chase started it was put on. The light went on and the siren went on.

Q When you say when the chase started, are you

referring to 83rd?

A 83rd Street going south.

Q 83rd going south on Lexington?

A Yes.

Q Now as you proceeded down Lexington, do you recall which lane you were in?

A It's the middle lane we were in, half and half in the middle and the left lane going down.

Q How many lanes of traffic did Lexington Avenue accommodate with cars parked on both sides?

A Three lanes,approximately three lanes.

Q And is it your testimony that you were partly in the center lane and partly in the lefthand lane?

A In the left.

Q As you proceeded down Lexington Avenue, what happened to those cars that were in front of you?

A Well, with the siren going, they were pulling over to the side. They were pulling over to give us the right of way to go down.

Q Approximately where was your car, where was the police vehicle, when the Thunderbird collided with the limousine?

A Maybe two car lengths behind, somewhere around there, a car length, two car lengths.

Q Where did your police vehicle come to a stop?

A Maybe 50 foot, 40, 50, 60 feet from the Thunderbird.

The Cadillac was up on the sidewalk.

Q Where was the Thunderbird?

A It was half in the middle of the intersection and half in the center lane and the left lane,sort of spun around.

Q Approximately how wide is 80th Street in lanes of traffic? Just how wide is the whole of 80th Street?

A The block itself?

Q No, the width of 80th Street.

A The intersection?

Q Yes.

A The intersection is, I imagine, about 50 feet wide.

Q Was the Thunderbird on the northerly side of the intersection or on the southerly side?

THE COURT: At what time?

MR. CARROLL: When he came to a stop.

THE COURT: When the officer came to a stop?

MR. CARROLL: Yes.

A Where was the Thunderbird?

Q Yes.

A It was on the southerly side of 80th Street.

Q And how far did you say your car was when you came to a stop?

A Car length, or 50, 60 feet.

Q Do you recall if your car had actually entered the intersection or not?

A Yes, we --

MR. DORFMAN: At what point, your Honor?

MR. CARROLL: When he came to a stop.

A We were sort of at the northerly end of the intersection, too. In or out, I couldn't exactly say.

Q When you came to a stop, when thepolice vehicle came to a stop, what did you do?

A We immediately ran --

Q Just tell me what you did.

A I ran to the Thunderbird and my partner came beside us, too. And we tried to open the doors. They were jammed.

Q Which door?

A The both doors.

Q If you remember.

A Both doors were jammed and we forced the driver's side open and the defendant was in the car then.

Q You say the defendant. Was that Johnson?

A Johnson.

Q Officer, tell us everything that you did for the next five minutes.

THE COURT: As best you can recall.

Q As best you can recall.

A As we opened the door, then we heard people screaming from the Cadillac, so we left him there, and another police car pulled up. We let a police officer guard him and told him he was under arrest and we proceeded to the Cadillac. And all those doors were jammed. We couldn't force them open. We had to break the window.

THE COURT: Where was the Cadillac?

THE WITNESS: The Cadillac was up on the sidewalk on the steps of the church on Lexington Avenue, so we broke the window open. I crawled in the Cadillac. And we started assisting, trying to get the people out of the Cadillac,because the gasoline was around, it might have went on fire then, too.

We removed all the passengers, took them to the hospital. We had assistance by people around there, too. They all went to the hospital.

Q How long did it take you to remove the people from the Cadillac?

A We must have been there over a half hour or more.

Q The question was, approximately how long did it take to remove the people from the Cadillac?

A Approximately a half hour, 20 minutes. I could not tell exactly. I didn't look at the time. All we were interested in was trying to save these people,get them out of the car.

Q Do you recall how many people you removed from the Cadillac?

A Approximately ten people from the car.

Q Approximately how many did you remove?

A There was eleven people in the car. We removed eleven people out of the car.

Q Were some people out of the car without your assistance?

A No, they couldn't get out.

Q Did you have to use any tools?

A We had to wind up with the crowbar to break the glass.

Q Where did you get the crowbar?

A From our emergency truck that we have, the emergency station wagon that we have, the emergency station wagon that we ride in.

Q Will you describe that emergency truck for us, the markings, and what sort of vehicle it was?

A It's a station wagon, and it has "Emergency Service, Police Department" on it. It's the same color as the regular police car.

Q Does it have a dome light?

A Yes.

Q And does it have a siren?

A Yes.

Q And who works the siren? Withdrawn.

Who was working the siren as you left 83rd Street?

A The driver would, the siren. It's in the steering wheel.

Q Do you recall approximately how many automobiles went over to the side or either side of Lexington Avenue as you proceeded on down Lexington Avenue?

A It would be just approximately.

Q All right.

A Maybe three or four.

THE COURT: What is your best recollection?

THE WITNESS: That's all.

MR. CARROLL: I have no further questions.

THE COURT: All right.

Mr. Dorfman.

CROSS-EXAMINATION

BY MR. DORFMAN:

Q Officer, going back to the incident that took place on 83rd Street near Lexington Avenue when your car stopped behind a double-parked car.

A Yes.

Q I am sorry. When the-- well --

THE COURT: I think the question is--

Who was behind the double-parked car?

THE WITNESS: The Thunderbird.

THE COURT: The Thunderbird, that is what I thought.

Q The Thunderbird stopped behind the double-parked car?

A Yes.

Q Your car stopped behind the Thunderbird?

A Sort of on the right side of the right front door, sort of in the rear.

Q I believe you were asked before if your car could have passed by on the right side, and you stated that there were other cars stopped for the red light.

Assuming that these other cars had moved, would your car have had room to pass by?

A Yes.

Q You were standing near to the right front fender of the Thunderbird, is that it?

A Yes. When I got out of my car, out of the emergency car, I went over to the right front fender.

Q All right.

Can you tell me what happened next?

A I was near the right front fender, and I was standing up, and Lee Johnson was behind the steering wheel, and I said, "Shut your motor off," and unknown to me the lights had started to change then, and he jerked the wheel and tried to run me down and started to go. I had to jump aside.

Q OK.

Did his car touch you?

A It just brushed by me. I jumped up on another car.

Q You jumped up on a parked car?

A A parked car.

Q On the hood of a parked car?

A Yes.

Q Could you tell me how much time elapsed from the time that he started his car towards you until the time that you finally got back into the police car?

A Seconds, I imagine. Less than a minute, a few

seconds.

Q Would it be more than ten seconds?

A Yes. 20 seconds. I don't know.

Q Approximately 20 seconds --

MR. CARROLL: I object, your Honor.

THE COURT: Yes. You did it as fast as you could, is that right?

THE WITNESS: Yes, I got in as fast as I could.

MR. DORFMAN: Your Honor, there is a lot of difference between a couple of seconds and a minute.

THE COURT: No, no. I think the officer is saying that you can't recall?

THE WITNESS: If I could honestly say 20 seconds, I would say 20. I can't honestly say how many seconds, how many seconds.

MR. CARROLL: Officer, just answer the questions.

Q When the Thunderbird turned the corner to go on to Lexington Avenue, were you in the police car yet?

A Yes.

Q Was the police car moving at that point?

A Yes.

Q At that point how far behind him was the police car?

A Approximately a car length, maybe two car lengths.

THE COURT: That is going around the corner, is that the question? Is that the question, Mr. Dorfman?

Q When the Thunderbird was going around the corner, how far behind was the police car?

THE COURT: Would that be right?

THE WITNESS: About two car lengths or so.

Q I believe youstated at that point the Thunderbird was going approximately 50 miles an hour?

A Approximately.

Q How fast was your car going?

A Approximately the same thing.

Q As you were proceeding down Lexington Avenue, were you gaining on the Thunderbird, was the Thunderbird gaining on you, or were you going approximately keeping --

A We were staying approximately the same distance.

Q Can you tell me about how fast either your car or the Thunderbird were going, at that point?

A Approximately 50 miles an hour,60 miles an hour.

Q As you approached the intersection of 80th Street and Lexington Avenue, the Thunderbird was going approximately 60 miles an hour, you were going approximately 60 miles an hour, is that right?

A Something like that.

Q And you were the same one to two car lengths behind?

A Two car lengths, at least two car lengths.

Q How far is two car lengths?

A About 40, 50 feet, I guess, 50, 60 feet.

THE COURT: Depends on the car.

THE WITNESS: How long the car is.

Q When you are saying two car lengths, you are talking how long?

MR. CARROLL: He just answered, your Honor.

THE COURT: I think, Officer, you said you think of it in terms of 25 feet?

THE WITNESS: Per car, yes, 22, 25 feet.

THE COURT: So when you say two car lengths, you are thinking around 50 feet?

THE WITNESS: 50, 60 feet.

THE COURT: 50, 60 feet. I guess that's close enough.

Q Where did the impact between the Thunderbird and Cadillac take place?

A At the intersection of 80th Street and Lexington Avenue.

Q At that point, where was your car?

A Approximately 60 feet behind, 50, 60 feet behind

him.

Q Do you know how long the block on Lexington Avenue between 80th and 81st Street is?

A How long the block is?

Q Either in feet or in car lengths.

A 100 some odd feet a block. I really don't know.

Q Can you tell me where in the block was your car situated at that point?

A We were on the east going straight down south.

THE COURT: I think he wants to know how far down the block, let's say, between 81st and 80th were you.

THE WITNESS: We stopped -

THE COURT: No, I think he wants to know first when the collision took place.

THE WITNESS: Where our car was when the collision took place?

THE COURT: Yes.

Q Right.

A Approximately two car lengths.

THE COURT: In relation to the block, you don't recall that? You just think as far as you can recall it was two car lengths, you don't recall?

THE WITNESS: Right.

THE COURT: In relation to the block between 80th and 81st.

Q Were you more than halfway down the block?

A Halfway down between 81st and 80th?

Q Yes.

A Yes, we were more.

Q More towards 80th?

A More towards 80th.

THE COURT: Where were you, sir, when you saw the crash? I suppose you saw the collision?

THE WITNESS: From inside the car, we saw it.

THE COURT: And what did you do? What did your car do from that point to when you say you stopped?

THE WITNESS: We stopped and as I -- we stopped and I started getting out, my partner started calling for an ambulance. After he seen the accident, he knew they would need an ambulance, and we called for more assistance.

THE COURT: What was the maneuver of the police car from the time you saw the collision until the time you stopped?

THE WITNESS: Police car was -- we stopped near the intersection there and left the car, left our car there. It was stopped.

THE COURT: Were you behind the Thunderbird?

THE WITNESS: Yes, we were behind. That was still in front of us, the Thunderbird.

THE COURT: The Thunderbird was still in front of you. That is what I was trying to get out.

Q I'm sorry, when your car stopped, the Thunderbird was still in front of you?

A Yes.

Q How far up Lexington Avenue was your car from the Thunderbird when you stopped?

A We were just near the intersection or our hood might have been in the intersection.

Q How many feet from the Thunderbird?

A Couple of car lengths.

Q So the same, approximately two car lengths?

A Two car lengths.

Q After the Thunderbird collided with the Cadillac, did the Cadillac move?

A Did the Cadillac move?

Q Yes.

A As he hit the Cadillac in the side, yes, it went up on the sidewalk. It moved.

Q Approximately how many feet did the Cadillac move?

A 25 feet up on the sidewalk.

Q After the Thunderbird hit the Cadillac, did the Thunderbird move?

A It just sort of spun and sat. Spun around.

Q Approximately how many feet from the original point of impact?

A couple of feet?

A Yes, 10, 15 feet.

Q And when you observed the impact between the Cadillac and the Thunderbird, how fast was your car going?

A Approximately, I would say we were going fast, maybe 50 miles.

Q 50 or 60 miles an hour?

A Yes.

Q When you brought your car to a stop, did you collide with anything or touch anything?

A No.

Q Did your car spin around?

A No.

Q Came to a stop facing southbound on Lexington Avenue?

A Yes, my partner was driving the car.

Q I know that, but you were in the car.

A Yes.

Q The car came to a stop facing southbound on Lexington Avenue?

A Yes.

MR. DORFMAN: I have no further questions.

THE COURT: Any questions?

MR. SULLIVAN: No, your Honor, no questions.

THE COURT: All right, I take it no further questions.

You have no further questions?

MR. CARROLL: City has no further questions.

THE COURT: Thank you, sir. You are excused.

(Witness excused)

MR. SULLIVAN: I call Mr. Neary.

M A T T H E W J. N E A R Y, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

MR. CARROLL: Your Honor, I don't see this witness' name listed in the pretrial memo, pretrial order.

MR. SULLIVAN: This is rebuttal.

THE COURT: All right, you go ahead and examine him. I will consider that later. See what he has to say.

DIRECT EXAMINATION

BY MR. SULLIVAN:

Q Mr. Neary, how many years were you on the Police Force?

A 26 years.

Q In what capacity?

THE COURT: What do you do now?

THE WITNESS: I am a professor at -- of police science at John Jay College of Criminal Justice.

THE COURT: Let's start with that.

You are a professor?

THE WITNESS: Yes.

THE COURT: Professor of what?

THE WITNESS: Police science at John Jay College of Criminal Justice.

THE COURT: For how long have you been a professor at John Jay?

THE WITNESS: Three and a half years in a full time capacity and approximately one year in a part-time capacity before that.

Q How long were you on the police force?

A 26 years.

Q When you retired, sir, what was your rank?

A Deputy Inspector.

Q Prior to being Deputy Inspector, you had been a captain, is that correct?

A Yes.

Q What experience have you had, sir, in any way connected with high speed chase?

A Well, when I was a patrolman, I engaged in a few.

Later on, as a captain, I was assigned to the Police Academy, in which part of the training program sometimes dealt with procedures for high speed chase, and in the interim, between those two periods, I was a supervisor of other police officers in various precincts.

Q Professor -

MR. CARROLL: Your Honor, at this time I object to any testimony by this witness under Rule 702 on the ground that specialized knowledge will not assist the trier of the fact.

THE COURT: Let me see you at the side bar.

(At the side bar)

THE COURT: What is your objection?

MR. CARROLL: On the ground that it is my position that he can't -- specialized knowledge in a case like this can't assist the trier of the facts.

THE COURT: I don't think so.

Why didn't you tell him that you were going to call

BY MR. SULLIVAN:

Q Professor, did the Police Department in December of 1973 have a policy with respect to --

THE COURT: When did you retire from the Police Department?

THE WITNESS: Effective January 1, 1974.

THE COURT: All right. You can answer the question.

Q When you retired, sir, or in December of 1973, did the Police Department, through the Commissioner, have a policy with respect to high speed auto pursuits?

A Yes, I would say so.

Q What was that policy?

A The policy was that in considering the undertaking of a high speed chase, careful consideration should be given to factors such as the weather, the severity of the offense committed or suspected, the presence of other vehicles, pedestrians, the safety of the officer and of the other vehicles and pedestrians, and any other conditions in the environment that might affect the chase.

And then the policy further stated that once the chase is undertaken, if at any time the safety of the officer or any other persons in the vicinity was endangered to the extent that any of them might be severely injured,

1 the chase should be terminated.

2 Q Would vehicle capability be a consideration in

3 addition to what you stated?

4 MR. CARROLL: I object, your Honor.

5 THE COURT: Vehicle what?

6 MR. SULLIVAN: Capability.

7 THE COURT: No, I sustain the objection to that.

8 I don't know how anybody knows what a vehicle's capability

9 is. I don't know what it is and I don't think he can

10 answer that question.

11 Q Was it the department policy to take into con-

12 sideration the type of vehicle being chased and the type

13 of vehicle being driven?

14 THE COURT: Why don't we cut all this? What he

15 wants to ask you is, if a police car is chasing another

16 car and the other car seems to be faster than the police

17 car, what is the policy then?

18 THE WITNESS: I would say that the policy would

19 be to terminate that chase and tomake maximum use of all

20 of the resources of the department.

21 THE COURT: What are they?

22 THE WITNESS: Such as the communications facility,

23 principally the communications facilities, and the --

24 THE COURT: In other words, radio somebody

25

further down and say, "Intercept this fellow"? Is that it?

THE WITNESS: Radio to the Central Communications office and tell themwhat is happening and ask for assistance, give all the information you can give to the Central Communications dispatcher, and ask him to pass that on to cars in the vicinity, and to call for assistance, yes.

THE COURT: All right.

MR. SULLIVAN: Thank you, Professor.

I have no further questions.

THE COURT: Any questions, Mr. Carroll?

MR. CARROLL: Yes, your Honor.

THE COURT: All right. Go ahead.

CROSS-EXAMINATION

BY MR. CARROLL:

Q When did you join the Police Force?

A July 1, 1947.

Q It was still known as the Finest, wasn't it?

A I think it still is.

Q So do I.

MR. SULLIVAN: So do I.

Q The New York City Police Department is known throughout the world as the finest.

THE COURT: Wait now, let's not get into this.

MR.CARROLL: He is an expert, your Honor.

THE COURT: I know, but that is not a matter of expertise. It is a matter of journalism.

Q Let me ask you this, then. When you were on the Police Force, you didn't act as a robot, did you?

A No.

Q You used your judgment and you used good judgment, and when you were a captain, didn't you expect your officers to use good judgment?

A Within the guidelines and policies laid down by the department, yes.

Q Right.

Now, you weren't at 83rd and Lexington on the morning of December 23, 1973, were you?

A No, sir.

Q And you weren't at 80th Street and Lexington Avenue about 1:40 in the morning on December 23, 1973, were you?

A No, sir.

Q And you just listed several factors that a police officer is required to take into consideration as a situation develops, it might even involve his-- danger to his life, isn't that so?

A Yes.

Q So that he has to make very fast decisions, doesn't he, very often?

A Very often, yes.

Q How much are you getting paid for your testimony this morning?

A I am getting paid a witness fee and a research fee.

Q I asked you how much is it?

A Total? $450.

Q How much is the witness fee?

A I don't know the breakdown. I understand the witness fee is $250.

Q Witness fee?

A Yes.

Q And the other? What is the rest of it?

A Research time.

Q What did you do in the way of research?

A I reviewed the department's rules and procedures, and certain training material that I had available to try to find material relevant to this specific matter of high speed auto chase and the general subject of safety and responding to emergencies and such.

Q Approximately how long did that research take?

A About five hours, six hours.

Q Assume this: Assume that an emergency patrol car is proceeding northerly about one o'clock in the morning of December 23, 1973.

Assume that the weather is clear, and that as the patrol car going north on First Avenue approaches 82nd Street, a Thunderbird comes easterly, makes that turn at 82nd Street, through a red light, and at that time the officers decided to follow and take whatever police action is required.

At 83rd Street, the next street north, the Thunderbird turns left. The police emergency vehicle follows and they go, they get to Lexington Avenue and 83rd Street, and one of the officers, the recorder, gets out of the automobile.

THE COURT: I think you better add there that at that point the traffic was stopped for a red traffic light.

Q Yes, traffic is stopped and the Thunderbird had stopped. The officer, the recorder, gets out, goes to the front of the automobile, and says, "Stop your engine."

With that, the Tunderbird drives at the officer, so that the officer has to jump back and avoid being hit by the automobile.

Then the Thunderbird turns south on Lexington

Avenue and goes three blocks.

The police officer at that point has to make that decision.

How much time does he have to make that decision?

MR. SULLIVAN: I object to that question, your Honor. I don't understand it.

THE COURT: Yes, I think --

MR. CARROLL: Is he supposed to sit there and look over the books?

THE COURT: I sustain the objection to the question. I thought you were going to get through all this and you were going to ask the officer, on the basis of proper police procedures, what would he do.

MR. CARROLL: Your Honor, my question is, does the officer have five hours to -- is he supposed to call up and ask what to do next?

THE COURT: Well, that is all.

Q Or does he have to make his decision on the basis of instantaneous judgment?

THE COURT: That is just a lot of characterization.

I sustain the objection.

Of course he has to make an immediate decision.

On that, what would be your decision?

THE WITNESS: On that I would have to say that my decision would be guided by the department principles and policies and guidelines. I would have to take into account the number of vehicles present, the number of pedestrians present, weather conditions, the speed of the other car, the nature of the incident --

THE COURT: So you can't tell us really on the basis of his hypothetical, you can't tell us what you would do?

THE WITNESS: I don't think so.

THE COURT: All right.

MR. CARROLL: I have no further questions, your Honor.

MR. DORFMAN: I have no questions, your Honor.

THE COURT: Any other questions?

MR. SULLIVAN: Yes, your Honor.

Your Honor, on the basis that the question was what Professor Neary did in research and on the basis that the door was opened, in that respect I offer in evidence Plaintiff's Exhibit 17 for identification, which I had offered.

THE COURT: I am not going to receive the exhibit. I shan't receive it. I will take your word for it. That's one of the things he researched for, is it?

A I don't think that's the recommended procedure, no.

THE COURT: All right.

Q Now, Officer, assume that the chase continues around 82rd and Lex at approximately 50 miles an hour down to 82nd, down to 81st, down to 80th, all the time going through red lights --

THE COURT: All the time? There are only two red lights. I don't know why you keep saying "all the time."

Q There is a red light at 82nd, there is a red light at 81st, there is a red light at 80th.

Assume the crash takes place. Now, based on that set of facts, Professor Neary, do you have an opinion as to what the proper police procedure would have been as to whether or not to continue this chase?

A My opinion would be that the officer should have given serious consideration to discontinuing that chase.

MR. SULLIVAN: No further questions.

THE COURT: All right, when you say "give serious consideration to discontinuing the chase" -- all right.

Anything else?

MR. CARROLL: Yes.

MR. SULLIVAN: I have no questions.

MR. CARROLL: The City of New York has no questions.

MR. DORFMAN: No questions.

THE COURT: All right, you are excused.

(Witness excused)

THE COURT: Ladies and gentlemen, we have one more witness, I understand, who is coming from Boston,and the witness is not here yet, and I think what I am going to do is to give you a luncheon break now, and I think this is going to be the last witness, and that will be followed by summations of the lawyers. Then you will hear my charge. We have to finish this up this afternoon.

You seem to smile about that. I guess you are glad. I think what I would like to do is to recess now, say, until half-past one, and that will give you a longer lunch hour, and hopefully this gentleman will be here at half-past one. If he is a few minutes late, we will just have to wiat for him.

All right. Thank you very much.

(The jury left the courtroom)

(In the robing room)

THE COURT: Now, gentlemen, a couple of things here. I am not going-- I am going to send this case to the

jury and any motions the defendants want to make, they can make them now, nunc pro tunc, or the reverse. If you want to make the motions or I will deem you have made motions, and I am going to deny them.

MR. CARROLL: As long as we are here, your Honor, because I know I will be reviewed on this -- so I might as well -- I will have enough criticism without inviting any.

Your Honor, the City of New York moves for a directed verdict on the grounds that the plaintiff has failed to establish either negligence on the part of the City or proximate cause, and the basis of that motion, your Honor, is the case of Stanton v. The State of New York, 29 AD 2nd 612.

Do you know the citation, your Honor?

THE COURT: Yes, I am familiar with it.

MR. CARROLL: In that case the Court of Appeals sustained the dismissal of a complaint.

THE COURT: You mean the Appellate Division?

MR.CARROLL: This went to the Court of Appeals, your Honor, that is why I was to give you the affirmed 26 New York 2nd 990.

THE COURT: All right.

MR. CARROLL: Where there was a real high speed

chase there, under circumstances that were almost bizarre, and the complaint was dismissed and the Court of Appeals stated that -- -- the Court of Appeals affirmed the dismissal of the complaint.

In that case the police officer was going south on the northbound lanes of Route 17, and was weaving in front of the automobile that he was chasing, had overtaken him, and had even forced him into the lefthand lane of the northbound lanes while they were going south, and the Court of Appeals nevertheless sustained the Court of Claims.

That was in 1970.

In 1972, in the case of --

THE COURT: You will get another chance. I don't want to go into all this.

MR. CARROLL: I thought you said you wanted to get rid of all this.

THE COURT: Yes, but you don't need to make all these citations. If a verdict comes in, I will let you make another motion at that time, and go into the law.

At this time I just want to hear your motions, and I am going to deny it and let it go to the jury.

MR. CARROLL: Your Honor, I believe the Rule 50 states I must state the basis of my --

to obey the main traffic lanes and to maintain a reasonable safe rate of speed, to have his automobile under reasonable control and keep a proper lookout under the circumstances then existing to see and be aware of what was in his view; to use reasonable care to avoid an accident.

MR. DORFMAN: I have no objection to that at all.

THE COURT: Sure.

MR. CARROLL: Your Honor, you haven't mentioned my charge No. 3, which is an excerpt from Thain vs. the City. That's a verbatim excerpt.

THE COURT: I will take a look at that. I don't think I have read this one.

MR. CARROLL: It is fairly early in the decision.

THE COURT: I will take a look at that. I would like to consider whether I add to the charge on Thain. I will worry about that.

MR. CARROLL: So I will mark that subject to consideration, your Honor.

THE COURT: Yes, I will think about it. I will give you a chance at the end of the charge to make any exceptions you want and additional requests.

MR. SULLIVAN: Your Honor, do I take it your Honor

does not want exceptions now or later?

THE COURT: No, no, I certainly do not want exceptions now. You listen to the charge. I don't know what you fellows do really; when you come into the federal court, though, you have to be a little faster. When I get through the charge, if you have any exceptions, you make them.

MR. SULLIVAN: Yes.

THE COURT: I have denied your requests except as charged because it is nothing but a summation for your client.

MR. SULLIVAN: Your Honor, I will state that No. 1 of my requests is taken, applied to our fact, but taken almost verbatim from the charge given in the Myers case which was given in this court.

THE COURT: Is this right under New York law, gentlemen? With respect to the police car which is being driven by Officer Gallagher, was an authorized emergency vehicle, and therefore specific regulations and laws which govern the operation of a police car. The Patrol Guide of the New York City Police Department provides that the radio motor patrol officer -- and I instruct you that Police Officer Gallagher was operating a police car as a radio motor patrol operator -- is to drive at a slow rate

of speed except under exceptional circumstances or extreme urgency," and Section 1140 of the New York Vehicle and Traffic laws provides in relevant part, (a) the driver of an authorized emergency vehicle, and the police car is an authorized emergency vehicle, when in pursuit of an actual or suspected violator of the law, may exercise the privileges set forth in this section but subject to conditions herein stated.

"The driver of an authorized emergency vehicle may proceed past a steady red signal, a flashing red signal or a stop sign, but only after slowing down as may be necessary for safe operation, exceed the maximum speed limits so long as he does not endanger life or property.

"The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others."

Which, as I understand it, is what the law is.

MR. SULLIVAN: I agree, your Honor.

MR. DORFMAN: Yes, your Honor.

MR. CARROLL: I have no objection.

AFTERNOON SESSION

1:30 p.m.

(In open court, jury present)

THE COURT: All right, let's have the witness be called.

Are you calling a witness, Mr. Carroll?

MR. CARROLL: Yes.

Mr. Ferder, will you take the witness stand, please.

M I C H A E L F E R D E R, called as a witness by Defendant City of New York, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CARROLL:

Q Mr. Ferder, are you presently employed?

A Yes, I am.

Q Will you tell us what your employment is?

A I am a research assistant for Harvard University Medical School and Boston City Hospital.

Q And generally what are your duties?

A I am conducting infectious research.

THE COURT: That's research regarding infectious diseases?

THE WITNESS: No, research regarding controls of

body infections once a patient has trauma.

THE COURT: Thank you.

Q Do you live in Boston?

A Yes, I do.

Q And what is your address there?

A 1455 Commonwealth Avenue, Brighton.

Q Approximately how long have you lived in Boston?

A Since July 10, 1976.

Q Were you served a subpoena to come here?

A Yes, I was.

Q Where was the subpoena served?

A At the laboratory where I work.

Q In Boston?

A In Boston.

Q And who served the subpoena on you?

A I don't think he is present here. He was I think a lawyer from the City Corporation.

Q From the Corporate Counsel's office?

A Yes, he was.

Q In 1973, to bring you back, around Christmas time, a couple of days before, perhaps, were you living in New York City then?

A Yes, I was.

Q And were you employed at that time or were you

1 going to school?

2 A Both. I was employed by the Albert Einstein

3 College of Medicine and I went to City College,City of New

4 York.

5 Q At the Albert Einstein College, where you were

6 employed, what were your duties there?

7 A I was an assistant medical technician for the

8 Department of Neural Radiology.

9 Q What has been your education, Mr. Ferder?

10 A Well, I am a history major going for a premed

11 background, getting ready to enter medical school.

12 THE COURT: Where was that, sir?

13 THE WITNESS: At City College.

14 THE COURT: At City College?

15 THE WITNESS: Yes.

16 THE COURT: Right. OK. That's it.

17 Q Now, do you remember an accident that occurred

18 in New York City at approximately Lexington Avenue and 80th

19 Street on the morning of December 23, 1973?

20 A Yes, I do.

21 Q Do you recall approximately what time it oc-

22 curred?

23 A I think approximately between 12:00 and 1:00

24 o'clock, somewhere in that --

25

THE COURT: That is your best recollection today?

THE WITNESS: Yes.

THE COURT: All right.

Q That would be the early morning of December 23?

A Yes.

Q Now, about that time, just prior to the incident, where were you?

A In what respect do you mean? Where was I coming from?

THE COURT: Tell us what were you doing at that time when you saw this accident?

THE WITNESS: Excuse me. I didn't hear.

THE COURT: What were you doing at that time?

THE WITNESS: I was walking on what was it-- let's see, 82nd Street I think.

THE COURT: You were walking on 82nd Street?

THE WITNESS: 82nd Street, yes.

Q Mr. Ferder, had you parked your automobile there?

A Yes, I had.

Q Now --

THE COURT: You parked it on 82nd Street?

THE WITNESS: Yes, I did.

THE COURT: All right.

Q Was that between Lexington Avenue and Third Avenue?

A Yes, it was.

Q And was someone with you?

A Yes.

Q Male or female?

A Female.

Q Approximately how close to Lexington Avenue were you as you parked your car between Lexington and Third, your best recollection? Nearer one or the other.

A I would say it was parked a little closer to Lexington but it was almost directly in the middle of the block.

Q Do you recall whether you were on the north side or the south side?

A South side.

Q You were on the south side?

A South side.

Q And before there was anything unusual --

THE COURT: Now, wait before anything unusual. What did you do? You and the young lady got out of the car, is that right?

THE WITNESS: Yes.

THE COURT: What did you do then?

THE WITNESS: Well, we were going to walk to a restaurant in that vicinity.

THE COURT: I see.

THE WITNESS: And we were just starting to walk to the restaurant.

THE COURT: Started to walk and you walked along what street, sir, then?

THE WITNESS: We were walking towards Lexington.

THE COURT: Walking towards Lexington on 82nd?

THE WITNESS: On 82nd Street, yes.

Q Then what happened?

A Well, then we heard the-- a loud siren. I didn't know what it was. So we -- out of general curiosity we went to the corner of Lexington, and a white car doing-- excessively speeding down Lexington Avenue passed us.

Q Which side of Lexington were you on at this time?

A We were on the east side of Lexington.

Then the police --

Q Did you hear a siren at this time?

A Oh, yes, we heard it as we were walking just on between 83rd and Lexington, you could hear it then.

Q All right. Then --

A I should say Third and Lexington, I'm sorry.

Q After the-- did the white car go by you?

A Yes, it did.

Q Do you know if it was a Thunderbird or not?

A Yes, it was.

Q After the Thunderbird went by you, did you see something else?

A Yes, the police.

Q All right.

Now, describe what you saw.

First of all, the color --

THE COURT: If you recall, the best of your recollection.

Q Yes.

THE COURT: It was some time ago.

A The car was white.

Q The police car?

A No, no, the Thunderbird was a white vehicle. The police car I don't remember what color it was because they have changed them.

Q Did it have a red dome light?

A Yes, it did.

Q Was it in operation?

A Yes, it was a standard police car, not unmarked.

Q Not unmarked?

A Not an unmarked car.

Q As you were standing on 82nd and Lexington Avenue,

is it your testimony that the Thunderbird went by you?

A Yes.

Q At that time where was the police car, if you recall?

A I'd say that I think maybe about a half a block behind, maybe a block behind, something like that.

Q All right.

THE COURT: You really remember seeing the white Thunderbird and then you saw a police car following it? Is that it?

THE WITNESS: Yes, I saw both.

THE COURT: You think they might have been half a block apart?

THE WITNESS: A half a block to a block apart.

THE COURT: Half a block to a block. All right.

Q All right, now, what did you do then?

THE COURT: Don't say, "What did you do then?" What did you observe then? Did you observe anything else after that?

THE WITNESS: Well, after they passed -- both cars passed us, we started trying to keep up, you know, maybe running down the block and seeing what was happening.

THE COURT: Which way were you running?

THE WITNESS: Going south on Lex, from 82nd going down to 81st.

Q At some time around there, did you cross Lexington?

A Yes, we did.

Q And approximately where were you when you crossed Lexington?

A About the middle of between 81st -- 82nd and 81st, somewhere in the middle of the block.

Q And then what happened?

A Well, approximately at the corner of 81st, just as we got to 81st, on the north side, the accident occurred.

Q When you say "the accident occurred," did you hear something or did you see something?

A Well, saw something. We --

Q Don't say "we."

A I saw -- sorry-- I saw the car that was now coming out from 80th Street on the west side get hit broadside and then flung around into the doors of the church.

Q Was that a black Cadillac?

THE COURT: If you recall?

A Yes, it was.

Q Where was the black Cadillac when you first saw it?

MR. DORFMAN: Objection, your Honor. He never said

he saw it more than once.

THE COURT: I think that's a fair point.

You looked down the street from where you were, 81st Street?

THE WITNESS: Yes, 81st.

THE COURT: You looked down and you saw this white Thunderbird. That is the thing you had seen on the corner of 82nd, is that right?

THE WITNESS: Yes.

THE COURT: You saw that run into what you say is a black --

THE WITNESS: A black Cadillac.

THE COURT: Black Cadillac car?

THE WITNESS: Yes.

THE COURT: Had you seen -- you had seen the white -- the Thunderbird before. Had you seen the other car before the collision?

THE WITNESS: The black? No, I had not seen it. It was obstructed from my vision.

THE COURT: So then you didn't see it?

THE WITNESS: No.

THE COURT: The first time you saw it is when it was hit?

THE WITNESS: The first time, yes, when it was

1 getting broadsided.

2 Q And at this time you were at 81st and Lexington

3 on the west side of Lexington Avenue?

4 A Yes.

5 Q During this time did you observe the police car?

6 A Yes.

7 Q All right. Was the police car proceeding souther-

8 ly?

9 THE COURT: Wait a minute. You are getting me --

10 I don't know about the jury, but he said he observed the

11 police car when he was on the corner following the white

12 car.

13 Is that correct?

14 The question is, at the time you saw this col-

15 lision, did you see the police car at that time?

16 THE WITNESS: Yes, because the police car was

17 still ahead of me.

18 THE COURT: Still ahead of you?

19 THE WITNESS: Yes.

20 THE COURT: Where was it?

21 THE WITNESS: It was now just about up to the

22 accident itself.

23 THE COURT: In other words, it would be a block

24 down from you?

25

THE WITNESS: Yes, it was a block down from me.

Q Did the police car stop?

A Yes, it did.

Q Where did it come to a stop?

A It came to a stop, if I remember correctly, in front of the demolished white Thunderbird, which was now on the east side of the street, and the police stopped on the east side of the street.

Q Where the police car stopped, was any part of the police car into the intersection?

A I don't remember.

THE COURT: You don't recall?

THE WITNESS: No.

THE COURT: Let me ask you this. You say you saw the police car stop. This is after the accident?

THE WITNESS: Yes.

THE COURT: Yousay in front of the Thunderbird? Does that mean south of the Thunderbird?

THE WITNESS: No, north of the Thunderbird because, see, what happened --

THE COURT: Between you and the Thunderbird?

THE WITNESS: I didn't see, your Honor -- what happened was the Thunderbird got spun around so now it was facing basically north on Lexington.

THE COURT: I see. All right.

Q Is it your testimony that the police car went through that intersection?

A No.

MR. DORFMAN: Your Honor, he is leading his own witness.

THE COURT: No, I think that is fair comment.

But the point is you saw it north of the wreck of the Thunderbird?

THE WITNESS: Yes.

THE COURT: That would be nearer to you, where you were standing?

THE WITNESS: Well, I was on the opposite side of the street. The police car was on the wast side. I was on the west side, but if you want to say it in your terms, yes, it was.

THE COURT: It would be that?

THE WITNESS: Yes, it would have been closer.

THE COURT: Could you tell at that point when you were looking down the street, whether the police car was in the intersection or not in the intersection, if you recall?

THE WITNESS: No, I don't recall that.

THE COURT: All right.

Q But is it your testimony that he was north of the Thunderbird?

A Yes.

Q Did you observe after that, did you observe --

THE COURT: Wait a minute.

I don't know how you are going to -- you are not going to lead your witness.

MR. CARROLL: What did he see? I am going to ask him what he saw.

THE COURT: Did you see anything after that?

Sir, after you saw where the police car -- and you saw that they had had this collision, and you saw where the police car was, did you see anything else?

THE WITNESS: OK. From your question, the Thunderbird was now facing northeast on Lexington.

THE COURT: Swung around?

THE WITNESS: Yes. The Cadillac was now into and up against the, I think it is a Unitarian Church.

The police car was a little bit north of the demolished white Thunderbird. The police then got out and immediately ran to the Cadillac. That was up against the doors of the church, and at that particular time the door on the driver's side of the Thunderbird opened up while the police were still at the Cadillac,and a man got out of

the car, a white man, and he started running towards -- let's see-- it's Lexington -- was it Park, Park, isn't it?

THE COURT: The next street is Park if you are going west.

THE WITNESS: I haven't been in New York for so long. He started running towards Park and I distinctly remember the police saying, "Stop that man."

The police did not go after him, though.

Q All right.

Now, at that scene, did you give your name as a witness to any policeman?

A No.

Q At some later time did you go to the 19th precinct?

A Yes, I did.

Q And did you see a Sergeant Hoffman?

A Yes, I did.

Q And did you relate to him something about the accident?

A Well, yes, I did, because --

THE COURT: Whendid you go to the precinct? That is on 67th Street?

THE WITNESS: I think so, your Honor.

THE COURT: When did you go there, do you remember?

THE WITNESS: I think it was -- let's see, I think Monday or Tuesday, because the Daily News came out with a story from the police that I thought was incorrect.

THE COURT: I see.

THE WITNESS: And the Daily News sent us to the Police.

THE COURT: Do you remember what day this was that the accident happened?

THE WITNESS: The accident happened early Sunday morning.

THE COURT: Sunday morning?

THE WITNESS: Sunday morning, so I think it was Monday or Tuesday. I am not quite sure.

Q All right now. After you talked to Sergeant Hoffman, then did you go to the District Attorney's Office?

A The District Attorney's Office contacted me.

Q And then did you go to the District Attorney's Office?

A Yes, I did.

Q And confer with some Assistant District Attorney?

A Yes, a week later.

Q Do you recall what the name of the District Attorney was?

A No. I can't remember his name.

Q Did you relate to the Assistant District Attorney what you related to Sergeant Hoffman?

A Yes, I did.

Q At some subsequent time did you testify at a criminal trial involving Lee Johnson?

A Yes, I did.

Q Do you recall approximately when that trial was?

A March of 1976, I believe.

Q Just about a year ago?

A Yes, it was.

MR. CARROLL: I have no further questions, your Honor.

THE COURT: All right.

Let's see how we do this.

Go ahead. You next.

MR. DORFMAN: All right, I just have a couple, your Honor.

CROSS-EXAMINATION

BY MR. DORFMAN:

Q Mr. Ferder, at the time the accident took place on 80th Street and Lexington Avenue, where was the police car?

A What do you mean?

Q I know it was on Lexington Avenue. Where in

the block or how far from the point of the accident?

A When impact took place?

Q When impact took place.

A Oh, maybe about a -- not really sure about that.

THE COURT: You don't recall?

THE WITNESS: No, I don't really recall that.

THE COURT: Can you give any other description how far it might have been?

Q Was it between 80th and 81st Street, or was it further north?

A The police car was definitely between 81st and 80th. There is no doubt about that.

Q Do you know how fast the police car was going at the time of the impact?

A No.

Q Do you know how fast the Thunderbird was going at the time of the impact?

A Well, I'd definitely say it was doing more than 70 miles an hour.

THE COURT: It seemed that way to you?

THE WITNESS: Yes.

Q When you first saw the Thunderbird go past you, was he also doing approximately the same speed?

A I am saying the Thunderbird was doing --

Q I am saying when you came up after parking your car and you saw the Thunderbird shoot past you, was he also going approximately over 70 miles an hour?

Do you understand my question?

A No, because I am saying the Thunderbird did go approximately 70 miles an hour. Now youare asking me the same question, or do you mean the police car?

Q I am saying at the point of impact.

A That I couldn't say.

Q So while he was traveling on Lexington Avenue he was going over 70 miles an hour?

A When he passed me I judged it to be about that.

Q Do you know how fast the police car was going when it passed you?

A No.

Q From the time you first saw both cars until the point of the accident, was the police car gaining on the Thunderbird, losing on the Thunderbird, or remaining in the same position?

A I don't think it was gaining on it.

Q Did you happen to see the traffic light for 80th Street and Lexington Avenue?

THE COURT: You mean at the time of the accident?

Q At the time just prior to the accident.

THE COURT: Do you recall whether you did?

THE WITNESS: No.

THE COURT: You don't recall that?

MR. DORFMAN: I have no other questions.

THE COURT: Mr. Sullivan.

CROSS-EXAMINATION

BY MR. SULLIVAN:

Q Would the name Klein refresh your recollection, Mr. Ferder, as to the Assistant District Attorney?

A That's the name, yes.

Q Kenneth Klein.

When for the first time after this accident -- now you spoke to the police a couple of days later, and then they put you right over to Mr. Klein -- when for the first time did anybody send you to Mr. Johnson's attorney?

MR. CARROLL: I object, your Honor. I don't see the relevancy.

THE COURT: Did anybody?

Q Did anybody ever tell Mr.Johnson's attorney abou you --

MR. CARROLL: I object.

THE COURT: I don't understand the question. I am puzzled by it.

Q My question is this, sir. You told Mr. Carroll

when for the first time you went to the police, and when for the first time you went to the Assistant District Attorney Klein.

When for the first time did you ever get to see Mr. Johnson's attorney,Mr. Rock?

A About February of 1976.

Q February of 1976?

And isn't it a fact that before they told Mr. Johnson's attorney about you being an eyewitness, that Lee Johnson spent 14 months in jail?

THE COURT: Wait a minute. I sustain the objection to all this. Please.

Q All right.

As I understand your testimony, when the white Thunderbird twisted around, the result was that from your vantage point you were looking directly at the driver's door, is that correct?

A Well, yes. Basically.

Q If the Ford Thunderbird was facing northeast, facing this way --

A That's right.

Q And you were standing northwest, you were looking right at the driver's door?

A Yes.

what the policemen were doing who had been in the automobile going down Lexington Avenue?

A Yes, I did see what they were doing.

Q What were they doing?

A They were frantically trying to get the people out of the Cadillac. The doors were jammed. They tried to use a crowbar, and then I remember the police saying, when they had finally gotten, I think, one or two of the occupants out of the car, that they saw a flame or a spark and they told everyone who was around there to get away because the car may blow up.

Q And what did the policemen do?

A They stayed there by the car.

Q And were there still people in the automobile?

A Yes, there were.

Q And what did the policemen do?

A Stayed with the people trying to --

Q Did they try to extricate them?

A Yes, they did.

Q Do you recall approximately how long it took the policemen to extricate the last person, approximately?

A I don't think I stayed around until they finally got the last person out.

Q You think there was someone still in the car

you know, who is a brother of Julie Baker. You don't have to worry about Steven Baker. All you have to consider is the claim of Julie Baker.

Another thing I mentioned at the opening was that there was a defendant Mr. Johnson -- Mr. Johnson was a defendant here but he has never been served and he is not a party in this case, so we don't have to worry about him.

With that, Mr. Dorfman, you may proceed.

MR. CARROLL: Your Honor, at this moment may I comply with Rule 50 and make a short motion at the side bar? Five sentences, no longer.

THE COURT: No, no. Come on, please, we are wasting time.

MR. CARROLL: Under the rules, your Honor, Rule 50, I am obligated to make motions at this time.

THE COURT: All right.

(At the side bar)

THE COURT: What is your motion?

MR. CARROLL: I move at this time, the City of New York moves at this time, under Rule 50, for a directed verdict on all the reasons that I stated in chambers this forenoon.

THE COURT: We did it all this morning. That is denied.

I think anybody that would do that was nuts.

He also said, as I recall, that it was not a real good proper police procedure to have the siren on, or even the light. In fact, the best way would be to sneak up on them; that there was no sense in scaring these people who had just stolen an automobile, incidentally, and were trying to get away, whoever the driver was. I am not going to try to say, I was not there, but the inspector, he said in his estimation the best way was to sneak up on them.

Then we had another inspector who said that he got paid $450 to come here. Well, $250 to come here, and $200 to spend five hours researching what a policeman should do under circumstances like these.

I will leave it up to you ladies and gentlemen as to how much you want to consider what they have to say.

The judge is going to charge you the law, and I can't tell you what the law is, but I believe he is going to say that the policemen were under a duty to pursue --

THE COURT: Now, wait --

MR. CARROLL: -- a traffic violator or --

THE COURT: Wait. If you say you are not going to give the law, don't give it, please, Mr. Carroll. Don't say what you believe he is going to say when you have just

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said you can't give the law.

MR. CARROLL: Now, you were here when Mr. Sullivan rested his case, and then you heard Mr. -- you saw Mr. Ferder come in and he testified that it was the corporation counsel's office that brought him from Boston to testify. And I knew what he was going to say but I wanted him-- I wanted you to hear what he was going to say because the corporation counsel's office has the duty of presenting the best position of the City of New York, not just the police, not just any particular person. We represent the whole city.

And Mr. Ferder testified, and I think he was very sincere, there is no question in my mind that he believes sincerely what he said.

First of all, he said he walked up to Lexington Avenue with his girl friend. He was walking up toward Lexington Avenue and as I recall -- now it is up to you now -- whether he heard the siren first or he saw the Thunderbird go by --but in any event, the Thunderbird went by, he heard the siren, and then the police came by. And then he crossed the street, Lexington Avenue, and, ladies and gentlemen, this is the City's Exhibit A in evidence, and that is a delineation of the intersection which we are talking about.

We in this courtroom can't punish anyone or do anything like that. It comes down to a money judgment and I will talk on that later. And I have to give the position most favorable to them.

But these are not that kind of people. They don't just want a money judgment, and they are not here for money from someone who is not responsible, and with their authority, I tell you that while it is your province, you have the right to determine who was responsible for this accident.

I feel they feel, after hearing the evidence, I don't see how Mr. Bliss was responsible. I don't see it. I don't see what he could have done.

But I will tell you it is a lawyer's trick and it is a proper one -- not a trick - - it is a strategy that one must use, and that is this: When youare in, and you know you are liable, and you know that you should pay, try and drag everybody else in with you, because you will have to pay less if somebody else is in there paying also.

And so Mr. Carroll as an advocate for the City tells you, and you heard the questions: "Did you blow your horn?" For what?

"Did you stop your car?"

He is in the path of a locomotive.

But they try to blame it on Bliss, so that they should have to pay less and I tell you, as an advocate, you have the right to find if you feel that way, that Bliss was responsible, but I don't think the evidence shows it, and we are here for justice. We are not just here for a money verdict.

That brings me to the City. My claim against the City, ladies and gentlemen, is this: On this one night, this one incident, and this one time only, and thus I am talking about--they were careless. I am not here to punish the police officers. They will continue to be police officers after this regardless of what happens.

I am not here to say that Gallagher and Jaques are good policemen. I am not here to say they are bad policemen. That is not the issue in this case.

The issue is on this one night, in this one incident, were they careless? Did they fail to follow proper police procedure? That is the only thing that we are here to determine.

Clarence Darrow was known to be one of the finest lawyers this country ever had, and if Mr. Darrow's office got a case and they were supposed to file a cliam by a certain period of time in that case, and they failed

to do so, in that one case, that would not say that Mr. Darrow or his office were bad lawyers. I would say simply that in that one instance they were careless and therefore they would be liable to their client.

And that's what we have here. I am not here to say, and I don't say it in jest, every time Mr. Carroll said it, I said it right after him, and it's the truth the City of New York's Police are the finest. And how did they become the finest? From experience. God knows the job they have to do out there is tough enough and from the experience that they gathered, they set down rules and regulations.

My initial reaction, as anyone's initial reaction would be, it is the American thing: Get the bad guy. That is your initial reaction and what makes the police in New York City the finest is that they know what happens when you have high - and I don't care what anybody says, this was a high speed pursuit, right through a residential area in Manhattan. They know what's going to happen. That's what makes them the finest.

And what did happen? And the police do have rules for this situation, ladies and gentlemen, and yet the No. 1 rule to be considered; can the police car overtake the Ford Thunderbird? And what did Officer Gallagher say

on the stand? We would have never caught him on straight speed. To that effect.

And the second question, and this is the key, to Officer Jaques this morning:

"Officer, what was the danger to the community or to anybody if this man was not immediately apprehended?"

And, ladies and gentlemen, his answer was "None." There was no danger to anybody.

And the result is that woman does not have her two sons and everybody else here spent months in the hospital,and there was no danger, and Mr. Carroll talks about a stolen car, but they didn't know it was stoken, and so what if it was stolen? It's a stolen car. It's $3000. The police recognized this.

Where are your priorities as to what happened? And then Officer Gallagher, he said there were rules, there were rules, but I don't know what they are. I just can't answer that. That's somebody's negligence. I mean either the City failed to tell him the rules or he failed to read the rules, but the man did not know the rules.

Mr. Carroll makes much of the fact that I had to pay Professor Neary to come. He is a professor at John Jay College and he didn't research to find out what

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2 impeach Mr. Fallek by questions. But no expert to say he
3 was wrong because he was right. And they knew it. And the
4 proof of the fact that they knew it is the defense that
5 they put attempted in this courtroom. Blame it on Bliss.
6 For your consideration, according to that
7 police pamphlet dated 1972. Vehicle capability. Can the
8 station wagon overtake the Thunderbird? That is No. 1.
9 Cars in the area. Are there cars in the area?
10 You heard Gallagher and Jaques both say there
11 were cars stopped at 83rd and Lex to get out of the way of
12 the police car, there were cars on Lex pulling over to get
13 out of the way. There was traffic.
14 No. 3, the violation. It was a red light. It
15 was a red light. That is the bottom line here.
16 And No. 4, the danger to the community and even
17 Officer Jaques told you absolutely none. No danger to
18 the community in any way, shape or form, except as a re-
19 sult of this high speed chase. And if they wanted him
20 for that red light, and if they wanted him for trying to
21 run down the police officer, they have a license number.
22 And they had no idea that the car was stolen. They had
23 that license number, they told you that at the outset.
24 So what is the foreseeable proximate cause of
25 what happened? Well, it is not foreseeable that this

THE CHARGE OF THE COURT

J. Bonsal

THE COURT: Mr. Foreman, as you are, Mr. Whitfield, by virtue of occupying the first chair, and ladies and gentlemen of the jury:

First of all, I would like to thank each of you, and I join with the lawyers in doing that, for the care and attention which you have shown throughout this short trial, and tell you I appreciate the sacrifices I know that each of you has been called upon to make in your own private lives so you could serve in this very important capacity of being a federal juror.

In a sense you and I are partners in this common cause of administering justice. It is my province to instruct you as to the law which governs this case, and on that you must accept my instructions.

But, on the other hand, ladies and gentlemen, you are the sole judges of the facts, and it is your recollection of the facts which governs here, and if that recollection differs from the lawyers' or from mine, disregard anything that we have said.

I told you at the outset, ladies and gentlemen, and during the trial you observed me having conversations with one or the other of the lawyers. Indeed I did. I

sustained objections and I overruled them. And I told you then, and I repeat now, don't pay any attention to any of these conversations.

Above all, ladies and gentlemen, draw no inferences at all from anything I may have said that might lead you to believe that I favor one side or the other in this controversy, because of course I do not. That is not my province. That would be yours.

You have just heard the summations of the lawyers, and here again, if you find that any of the lawyers said anything which you think is outside the record, just disregard what they said. You, the jury, are the sole judges of the facts and you are the sole judges of the credibility of the several witnesses who testified during the trial.

How do you determine whether you find these witness to be credible? You saw them on the stand. You observed them giving their testimony. How did they impress you? Did you think they were testifying candidly and frankly and fairly?

So, ladies and gentlemen, apply your common sense and experience, just as when you are called upon to do in determining an important matter in your own private lives, when you have to decide whether or not you have been

given a true picture of a given situation.

I think you consider a witness' demeanor, a witness' background, his candor or lack of candor, the witness' possible bias, his means of information, and the accuracy of his recollection, and you will consider whether you find a witness' testimony is supported or you find it to be contradicted by other credible testimony or circumstances.

You consider whether a witness has an interest in the case.

Here, of course, a number of witnesses had an interest in the case. The plaintiff, Miss Baker, Miss Julie Baker obviously has got a very strong interest in this case; and so does the defendant Mr. Bliss, the chauffeur of the black limousine; and so do these patrolmen who work for the City of New York.

The City of New York is being sued here. Remember we had Patrolman Russell, Patrolman Gallagher and Patrolman Jaques.

This does not mean that the witness will falsify because he has an interest, but it is merely a factor which you the jury may consider in determining a witness' credibility.

Then during the course of this trial we had some

so-called expert witnesses. For instance, we had Dr. Crane. He is a doctor, a professional man. Then we had these two retired police inspectors, Mr. Fallek, I think, and Mr. Neary, as I recall their names.

The ordinary witness testifies as to what he saw and what he did. An expert witness like a doctor or an expert on some subject is allowed to express an opinion on a subject.

Remember the doctor expressed an opinion regarding Miss Baker.

These other gentlemen expressed opinions as to policemen.

But otherwise you apply the same test to the expert witnesses as you do to the other witnesses, and you must find that an expert witness, whether it is a medical opinion or any other kind, is based on facts which you find to have been present in the case.

If you find that any of these witnesses appeared before you trying to mislead you or lie to you, you can disregard all of that witness' testimony. You can accept part of a witness' testimony if you find it to be reliable, and you can disregard the rest.

Now as to the law which governs this case, ladies and gentlemen, I know some of you have had previous

experience as jurors in other accident cases, but please dispel from your mind anything that another judge might have told you or what you might have read in the newspapers.

Here please follow the law as I will give it to you.

First of all, this is a civil action as distinguished from a criminal action, and in a civil action ghe burden is upon the plaintiff, Miss Baker here, to prove every essential element of her case by a fair preponderance of the evidence.

And what do I mean by that? Well, obviously it is a weighing process. Imagine a scale and you are putting some meat in one side of the scale and a weight on the other. The plaintiff, here, having the burden of proof by a fair preponderance of the evidence, must make those scales tip in her favor; they can tip ever so slightly. But if the scales remain even, or if they should tip on the defendant's side, then of course the plaintiff has not carried her burden of proof, and your verdict would be for the defendants.

And, of course, it is the quality of the evidence, not the quantity of the evidence. It is the quality of

the evidence, the evidence which you think most closely represents the picture of what happened.

The law recognizes two types of evidence; direct evidence and circumstantial evidence.

Direct evidence is that testimony of a witness as to what he saw and what he did.

Circumstantial evidence consists of circumstances proved from which the jury may infer by a process of reasoning certain other facts which are sought to be established as true.

The classic example, of course, of circumstantial evidence is if you were to go home to your house or apartment and walk into the apartment and somebody is watching TV, and they look at you and they notice your hat is wet and your coat is wet, they say, "Gee, it is raining outside." They have not looked outside. They looked at you, and by a process of reasoning, they inferred that it was raining outside.

Circumstantial evidence, you see it in this case, and it is good evidence and must be carefully considered by you depending on the inferences which you find may be reasonably drawn from it.

No greater degree of certainty is required when the evidence is circumstantial than when it is direct, but

in either case, as I mentioned to you, the plaintiff has the burden of proving her case by a fair preponderance of the evidence.

This has been a short trial, ladies and gentlemen. I don't intend to review all the evidence. The lawyers just did that.

As I recall it, and I am limiting this to contentions. As I remember it, Miss Baker is suing the City of New York and Robert E. Bliss, the driver of the black limousine, for damages for personal injuries she claims she sustained when the black limousine in which she was riding as a passenger, I believe in the back seat, was in a collision with a white Thunderbird on December 23, 1973, at around 1:30 a.m., at the intersection of 80th Street and Lexington Avenue.

And the plaintiff contends this accident or this collision and the resulting injuries were caused by the negligence of the City of New York and Mr. Bliss, and the plaintiff contends that the City of New York was negligent because she says that the police officers, and of course they were agents of the City of New York, and the City of New York, is responsible for anything they did in the course of their duties; plaintiff contends that Gallagher and Jaques in their pursuit here were negligent

in the way they did it. And the plaintiff also contends that Mr. Bliss, the owner and operator of the Cadillac limousine, was negligent.

As I recall it, the plaintiff, Miss Baker, testified she was sitting in the back seat of the limousine. You remember how they were all picked up, I believe, by Mr. Bliss at the Waldorf-Astoria, I think, [illegible] after a party in the hotel, and they picked up this black limousine, I think there were no taxis, I suppose the limousine would serve the purpose.

I think they said they were going to pick up their own cars further up in the City. And then, as I recall it, the black limousine made a righthand turn and proceeded east on 80th Street to the intersection of Lexington Avenue where it was involved in a collision with the white Thunderbird.

Miss Baker testified, as I recall it, she did not remember much about the ride in the limousine or about the accident. She remembers, I think she said that she was awakened by a flash of a newspaperman's camera while she was sitting on the sidewalk. And she also remembers later on that she came to in the Lenox Hill Hospital.

The defendant City of New York does not deny that there was a collision here and it does not deny that

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Miss Baker was a passenger in the limousine and sustained injuries as a result of the collision.

But the City of New York does deny that the police officers were negligent in pursuit of the white Thunderbird down Lexington Avenue and the City of New York says even if they were negligent, their negligence was not the proximate cause of the collision.

I will tell you about proximate cause in a few minutes.

The City of New York contends that Officer Gallagher and Jaques observed the driver of the white Thunderbird go through a red light and then they say he attempted -- I think that was on 83rd Street -- attempted to run over Police Officer Jaques, and therefore the police officers had a duty to pursue the driver of the white Thunderbird down Lexington Avenue.

And the defendant Mr. Bliss, who was driving the black limousine, denies that he was negligent in the operation of the limousine. He said he was driving eastbound approximately 15 to 20 miles per hour as he approached the intersection of Lexington Avenue and the traffic light was green.

As I recall it, he said that he proceeded, as he proceeded across Lexington, he looked to his left and

saw a car coming down at high speed and was unable to avoid being hit broadside by it.

I think he also said that he recalls looking up Lexington Avenue just before the collision and seeing a red light about a block away but I think he said he did not hear any sirens.

He told us that it was a cold night, and that the windows in the limousine were shut.

Now turning to the law which governs this case, ladies and gentlemen, as I mentioned to you earlier, the plaintiff has the burden of proof by a fair preponderance of the evidence, and the plaintiff has the burden of proving the following:

First, that there was a collision here, and I don't think there is any dispute about that. All hands agree there was an unhappy collision that evening.

Second, that the defendant you are considering, and, please, ladies and gentlemen, consider the City of New York and Defendant Bliss separately, that the defendant you are considering was negligent, and that this negligence was a proximate cause of the collision and the resulting injuries to the plaintiff.

I mentioned to you when I speak of negligence on the part of the defendant City of New York, that includes

the negligence of any of its agents or employees, including the police officers. The City of New York is responsible for the negligence of its agents or employees committed in the scope of their employment.

Now the mere fact that there was a collision here, ladies and gentlemen, in and of itself, does not entitle Miss Baker to recover damages from either of these defendants. Nor does it justify any assumption on your part that these defendants should be liable to the plaintiff in damages, because these defendants were not insurers of Miss Baker's safety.

Their liability if any here must derive from negligence, negligence proved and established in the manner I am instructing you, and not from the fact that the plaintiff had an accident and sustained an injury.

But what is negligence? Negligence is lack of reasonable or ordinary care. It is the failure to use ordinary care in the management of one's property or person in one's activities. So the ultimate question which you the jury must resolve here is what was reasonable under the circumstances as to which you have heard testimony.

And here you recognize that one set of circumstances might demand slight care and yet be reasonable. Another might demand the highest possible degree of care

and foresight in order to be termed reasonable. And in determining what would have been reasonable care under the circumstances of this case, ladies and gentlemen, please draw on your general knowledge and experience and measure the defendant's conduct against those standards that you believe would have been reasonable.

Now with respect to the police car driven by Officer Gallagher, under the New York law this is an authorized emergency vehicle, and there are specific regulations and laws which govern the operation of an authorized emergency vehicle.

Among these are that the driver should drive at a slow rate of speed except under exceptional or extreme emergency, and the vehicle and traffic law provides that the driver of an authorized emergency vehicle, when in the pursuit of an actual or suspected violator of the law, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

The statute goes on to say "The driver of an authorized emergency vehicle may proceed past a steady red signal, a flashing red signal, or a stop sign, but only after slowing down as may be necessary for safe operation, that he may exceed the maximum speed limit so long as he does not endanger life or property."

Then the statute provides that these provisions that I have just read you "shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of other."

Now going further into the vehicle and traffic law, and this would apply to the defendants here, "it is the duty of each of the drivers to operate his automobile with reasonable care, having regard to the actual and potential hazards existing from weather, road, traffic, and other conditions."

Each of them was under a duty to obey the traffic lights and, of course, the City vehicle, as I told you before, had greater privileges on that, but the statute provides that each of them was under a duty to obey traffic lights and to maintain a reasonable safe rate of speed, to have his automobile under reasonable control, and to keep a proper lookout under the circumstances existing to see and be aware of what was in his view, to use reasonable care to avoid an accident.

So that's the general provision as to drivers, and I just reviewed with you some special conditions regarding emergency vehicles.

Now again regarding both the drivers here, the vehicle and traffic law provides that the driver having a green light should proceed with reasonable care under the circumstances. If he observes another vehicle so near the intersection as to render it likely that a collision would occur unless he reduced speed or stopped, or if he should have made such an observation, he should not have proceeded without using such care as to avoid collision.

Then the law also provides that if the police car here was exhibiting a red light and using his siren, the driver of every other vehicle on the road, assuming, of course, he has the opportunity to do so, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to and as close as possible to the righthand edge of the roadway clear of any intersection and shall stop and remain in such position until the police car has passed.

However, the driver of the police car is not relieved from his duty to drive with reasonable care for all persons using the highway.

So here, ladies and gentlemen of the jury, considering this collision at 80th Street and Lexington Avenue, determine what you believe was reasonable under

the circumstances, and draw on your own knowledge and experience, and measure the conduct of these defendants, the City of New York and Robert E. Bliss against those standards and determine whether they were acting reasonably here.

Then the next thing is proximate cause. You first have to determine whether the City of New York or Mr. Bliss were negligent.

If you find that either of them or both were negligent, then you must determine whether that negligence was the proximate cause of the collision.

All proximate cause means here is that the negligence was a substantial factor, a substantial factor in causing the collision, and the injuries to the plaintiff, Miss Baker.

So consider here, should you find that the City of New York was negligent, consider whether that negligence was a substantial factor causing the accident. And do the same thing with Mr. Bliss. Of course, you can find that both the City of New York and Mr. Bliss were negligent, and that each of their negligences was a substantial factor--you can have more than one substantial factor in causing the collision.

If you find that neither of the defendants, the

City of New York or Mr. Bliss, were negligent or if they were, that neither of their negligences was the proximate cause of the collision, then the plaintiff is not entitled to recover, and your verdict should be for the defendant.

On the other hand, if you find that either or both of the defendants were negligent under these instructions, and that the negligence was a proximate cause of the collision, a substantial factor, then and only then do you consider the damages to be awarded to the plaintiff, Miss Baker.

The mere fact that I will now discuss damages with you does not indicate any opinion on my part as to how you should find on the issue of negligence or proximate cause.

In assessing damages, ladies and gentlemen, personal feelings and sympathy must not enter into your considerations. Here your aim should be to award Miss Baker a sum of money which you believe will be fair and reasonable compensation to her for the injuries which she has received by reason of this accident.

And here again Miss Baker has the burden of proof, this weighing process I mentioned; the scales must tip in her favor, and in arriving at the amount of damages, you must take into account the nature and extent of Miss

Baker's injuries, whether you find them to be temporary or permanent in character, the medical expenses which she has incurred, and the pain and suffering which she endured or which you may find she will endure in the future.

Remember Miss Baker testified that she woke up in the Lenox Hill Hospital and she does not remember very much about it at the beginning except she had a good deal of pain in her left leg. She says she was placed in traction. I think she says she stayed in traction for close to a month and that she remained in the hospital for some 32 days.

She was on crutches when she left the hospital and went back to Kansas City, and I think she said she continued to use crutches for some time.

Then I think she testified she continued to receive medical treatment from a doctor in Kansas City after she returned from New York.

She told us she still has pain in her left hip and shoulder when she walks long distances or sits for long periods of time. She can't engage in sports the way she used to; that her shoulder hurts her in bad weather, and I think she said something about she sometimes has nightmares, and that she also uses Donnatol, I think is what it is called, for her nerves.

Then you will recall the testimony of Dr. Crane, the orthopedic surgeon who treated Miss Baker at Lenox Hill Hospital.

He testified from his records and said that Miss Baker suffered a fracture, I think of the pelvis, the left side of the pelvis.

He told us about how the ball of the hip joint was pushed into the socket, and that she had a fractured left collarbone, a concussion, and a bruise on her bladder and I think he said that while she was under his care, he noticed that after the accident, one leg I think was something like half an inch shorter than the other.

Dr. Crane testified that Miss Baker was in traction for approximately a month, and that she had some kind of an infection in the hospital,which people sometimes get in the hospital, I think it was a urinary infection; that she remained there for 32 days, that she was given medication for her pain, and that when she left the hospital, she was walking on crutches and that she was instructed not to place any heavy weight on her left leg.

Then as I recall it Dr. Crane indicated that so far as the future, the rough edges of the ball and socket in the pelvis increased the likelihood that the plaintiff might develop arthritis later on and there might be a

possibility that some further surgery would be required.

In arriving at the amount of your award here in damages, you would consider, of course, plaintiff's medical expenses.

Here, as I understand it, the parties agree that Miss Baker incurred medical and hospital expenses approximating $7000, and that these expenses are fair and reasonable, but, of course, neither the City of New York nor Mr.Bliss, in stipulating that she did incur these expenses, concedes that they are responsible for them. They deny that they are ~~responsible for~~ payment of these expenses.

The final element, ladies and gentlemen, is the element of pain and suffering which Miss Baker has endured or will endure as a result of this collision.

She is entitled to compensation for that. But here, ladies and gentlemen, the only yardstick can be your own common sense and judgment based on your own experience. There can't be any hard and fast rule. Your award should be based on a full consideration of the credible evidence in the case and bear a reasonable relationship to what the evidence indicates is the nature and extent of the pain and suffering which Miss Baker has sustained and will sustain by reason of the collision.

As I recall it, Miss Baker told us she was 21,

I think, last October. In considering future pain and suffering, you may consider her age. I believe under the life expectancy tables there is nothing very -- I don't think they are very sure about all those things, but it is a guide -- under the life expectancy tables a person of 21 has a life expectancy of something like 55 years, so you might consider that in connection with the pain and suffering.

Consider that, and also consider the evidence that you have heard regarding Miss Baker's health, her habits, employment, and activities.

Now, ladies and gentlemen, you have the right to see all of the exhibits which have been received in evidence. I think I will ask the lawyers to send in the photographs because that shows the location, and if you want any of the other exhibits, just let me know by telling the marshal.

Ladies and gentlemen, remember that a jury deliberation is one in which everybody expresses their views and exchanges views, and don't be afraid to change your original view if after discussing it with your fellow jurors you become convinced that your original view was wrong.

And, of course, I mentioned to you, you must

reach a verdict here unaffected by any sympathy, any bias, or any prejudice.

Both sides here, of course, they agree on one thing: they want this case to be decided by you. Each one would like to have you decide it in their favor, but both want you to decide it.

So do listen carefully to the positions taken by your fellow jurors and seek to facilitate the course of justice by reaching a verdict here one way or another.

There are six of you on the jury and your verdict must be a unanimous verdict. I mention this because in the state courts you have a five-sixths verdict but here your verdict must be unanimous.

To assist you in returning a verdict, I have prepared, as one of the lawyers indicated, a series of six questions here which sort of follow the instructions that I have given you and may help you, Mr. Foreman, in reporting a verdict.

The first question: Was the defendant City of New York negligent in connection with the collision?

Yes or No.

2: If your answer to that question is "Yes," was the negligence a proximate cause of the collision or a substantial factor? Yes or No.

3: Was the defendant Robert E. Bliss negligent?

We go through exactly the same thing in 3 and 4 with Mr. Bliss.

And then:

5: If your verdict is for the plaintiff against either of the defendants, what were the total damages sustained by plaintiff Julie Baker as a result of the collision? There is a dollar sign.

Then the final question:

6: If you find that both the defendants were negligent, (a) what was the percentage of negligence attributable to the defendant City of New York?

And (b) what was the percentage of negligence attributable to the defendant Robert E. Bliss?

All right, counsel, come forward now.

(At the side bar)

THE COURT: Exceptions.

MR. SULLIVAN: I have no additions, your Honor. I only except insofar as the charge omits the inclusion of our written requests. Other than that --

THE COURT: All right.

MR. SULLIVAN: No exceptions.

MR. DORFMAN: No exceptions.

THE COURT: How about you?

MR. CARROLL: Your Honor, I urge you to charge my proposed No. 3.

THE COURT: No, I won't do that. I did say something about duty but I am not going to charge that.

MR. CARROLL: That is denied?

THE COURT: That is right.

MR. CARROLL: Thank you, your Honor.

THE COURT: One thing while you gentlemen are here. I was amused at this last question you put: Supposing they find he was negligent and no proximate cause, what do you think happens? I want to give it to them anyway.

MR. SULLIVAN: I don't think that will happen.

THE COURT: All right.

(In open court)

xx (Court Exhibit 1 marked)

(Alternate jurors were excused by the Court)

(Court Exhibit 1 handed to the foreman of the jury)

(Photographs handed to the jury)

THE COURT: Is that all the pictures?

MR. SULLIVAN: Yes, your Honor. There are other exhibits but that's all the pictures.

THE COURT: All right, that's fine.

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(One U. S. Marshal was duly sworn)

(At 3:55 p.m., the jury retired to deliberate)

THE COURT: Gentlemen, I will mark these requests to charge as Court exhibits so they will be in the record here.

xx (Court Exhibits 2 and 3 marked)

(Recess)

(5:35 p.m.) (In open court, jury present)

THE COURT: Ladies and gentlemen, the lawyers and I thought we would call you in. You have been at it not very long, of course, but an hour and a half, so it is now 25 to 6, and we just wanted to see what you would like to do.

You can continue to deliberate as long as you want to, of course, this evening. I don't recommend it particularly. I know there are four ladies there and I don't like ladies staying in this part of town at night if they can avoid it, but you can, of course, do that, or you can decide to deliberate a little while and then go home, or you can decide to go home right now and come back in the morning, and I would just like to get your feeling of what you would like to do.

Mr. Whitfield, what do you think would be best?

JUROR NO. 1: I think we are substantially

close to a decision.

THE COURT: You think it might be wise to stay a little while longer? Does everybody feel that way?

(Jurors nodded assent)

THE COURT: I think that is fine. Why don't you do that? Return and continue deliberations, and any time that you want to, you just let the marshal know and let me know what you want to do.

(The jury retired to continue deliberations at 5:40 p.m.)

(Recess)

(6:00 p.m.) In open court, jury present)

THE CLERK: Members of the jury, will you please answer "Present" as your names are called?

(The names of the jurors were called and all responded "Present.")

THE CLERK: Mr. Foreman, has the jury reached a verdict?

JUROR NO. 1: It has, sir.

THE CLERK: Is that your verdict?

JUROR NO. 1: This is our verdict.

THE CLERK: Special Verdict.

Question No. 1, the answer is "Yes."

Question No. 2: The answer is "Yes."

Question No. 3: The answer is "No."

Question No. 4:. There is no answer.

Question No. 5: $175,000.

Mr. Foreman, is that your verdict and so say you all?

JUROR No. 1: Yes, sir.

THE COURT: Anybody want the jury polled?

MR. SULLIVAN: Not me, your Honor.

THE COURT: All right.

Ladies and gentlemen, thank you very much.

I never comment on a jury verdict because, as I tried to explain to you in my charge, I think a jury verdict is a very sacred thing. I think I have no right to comment on it.

I do want to thank all of you for the care and attention you have shown throughout this case and your promptness in being here. It has all been a great tribute to the jury system. I want to thank you very much.

(Jury excused)

THE COURT: All right, gentlemen, is there anything more we can do tonight?

MR. CARROLL: City has nothing further.

MR. SULLIVAN: No, your Honor.

THE COURT: All right. Thank you very much.

...

DUB AND TIMLEY SERVICE OF 3 COPIES OF THE WITHIN Appendix, IS HEREBY ADMITTED THIS 30th DAY OF June, 1977

Harry A Tipsey
Attorney for plt. Resp